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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 287

EARL RUSSELL BROWDER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 25, 1940.

CERTIORARI GRANTED OCTOBER 31, 1940.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

EARL RUSSELL BROWDER,

Defendant-Appellant.

2

Statement Under Rule 13.

3

The indictment in this case (C 106-210) was filed on November 17, 1939. The indictment is in two counts. Each count charges a violation of Section 220 of Title 22 of the United States Code. On November 20, 1939, the defendant pleaded not guilty. Bail in the sum of \$7,500 was set and was furnished on this date. The case came on for trial before Hon. ALFRED C. COXE, United States District Judge, and a jury in the Southern District of New York on January 17, 1940. The trial continued up to, and concluded on, January 22, 1940, when a verdict of guilty on each count of the indictment was returned. The defendant was sentenced on that date to a prison term of two years on each count of the indictment and a fine of \$1,000 on each count of the indictment; the prison terms to run consecutively; the total fine to be \$2,000. Judgment was entered on the date of sentence. On January 23, 1940, notice of appeal was filed. On February 7, 1940, the assignment of errors was filed. The defendant has been released on bail pending the outcome of this appeal.

Indictment.

IN THE DISTRICT COURT OF THE
UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Southern District of New York, ss.: The Grand Jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for that District, upon their oath present:

That heretofore, to wit, on or about the 30th day of April, 1937, at the Southern District of New York and within the jurisdiction of this Court, EARL RUSSELL BROWDER, alias "Nicholas Dozenberg", alias "George Morris", alias "Albert Henry Richards", the defendant herein, unlawfully, wilfully and knowingly, for the purpose of entering the United States, used and attempted to use a passport, issued under the authority of the United States, the issue of which he secured by reason of a false statement which he made in the application therefor; that is to say, at the time and place aforesaid, the defendant herein did unlawfully, wilfully and knowingly use and attempt to use passport number 145132, issued on or about September 1, 1934, in the name of Earl Russell Browder, which said passport the defendant herein had obtained and secured by reason of a false statement made in the application therefor, which said application was executed by him at a passport agency of the Department of State at New York City, New York, on or about August 31, 1934, in the name of Earl Russell Browder, which said passport thereafter was renewed at a passport agency of the Department of State at New York City, New York, on or about February 2, 1937, in which said passport application, executed on or about August 31, 1934, as aforesaid, the defendant

Indictment.

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rein stated that the statements in said application, including the statement "None" in a blank after the words "My last passport was obtained from", were true, whereas, the truth and in fact, as the defendant herein then and there well knew, he had previously obtained passport number 2990, in the name of "Nicholas Dozenberg", which said passport was issued on or about March 12, 1921, on an application executed at a passport agency of the Department of State at New York City, New York, on or about March 9, 1921, and had also previously obtained passport number 475085, in the name of "George Morris", which said passport was issued on or about November 19, 1927, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 17, 1927, and had also previously obtained passport number 451,933 in the name of "Albert Henry Richards", which said passport was issued on or about November 19, 1931, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 18, 1931, which said passport thereafter was renewed at a passport agency of the Department of State at Chicago, Illinois, on or about November 9, 1933, which said passport number 145182, issued on or about September 1, 1934, in the name of Earl Russell Browder, issued on the said application as aforesaid, the defendant herein did use, and present to an Inspector of the United States Immigration and Naturalization Service, at the Port and City of New York, within the Southern District of New York and within the jurisdiction of this Court on or about the 30th day of April, 1937, to obtain and secure entry and admission into the United States; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 22; Section 220, United States Code).

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9

10

Indictment.

SECOND COUNT.

11

12

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on or about the 16th day of February, 1938, at the Southern District of New York and within the jurisdiction of this Court, EARL RUSSELL BROWDER, alias "Nicholas Dozenberg", alias "George Morris", alias "Albert Henry Richards", the defendant herein, unlawfully, wilfully and knowingly, for the purpose of entering the United States, used and attempted to use a passport, issued under the authority of the United States, the issue of which he secured by reason of a false statement which he made in the application therefor; that is to say, at the time and place aforesaid, the defendant herein did unlawfully, wilfully and knowingly use and attempt to use passport number 145182, issued on or about September 1, 1934, in the name of Earl Russell Browder, which said passport the defendant herein had obtained and secured by reason of a false statement made in the application therefor, which said application was executed by him at a passport agency of the Department of State at New York City, New York, on or about August 31, 1934, in the name of Earl Russell Browder, which said passport thereafter was renewed at a passport agency of the Department of State at New York City, New York, on or about February 2, 1937, in which said passport application, executed on or about August 31, 1934, as aforesaid, the defendant herein stated that the statements in said application, including the statement "None" in a blank after the words "My last passport was obtained from", were true, whereas, in truth and in fact, as the defendant herein then and there well knew, he had previously obtained passport number 2990, in the name of "Nicholas Dozenberg", which said passport was issued on or about March 12, 1921, on an application executed at a passport agency of the Department of State at New

Indictment.

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ork City, New York, on or about March 9, 1921, and had also previously obtained passport number 475085, in the name of "George Morris", which said passport was issued on or about November 19, 1927, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 17, 1927, and had also previously obtained passport number 451933, in the name of "Albert Henry Richards", which said passport was issued on or about November 19, 1931, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 18, 1931, which said passport thereafter was renewed at a passport agency of the Department of State at Chicago, Illinois, on or about November 9, 1933, which said passport number 145182, issued on or about September 1, 1934, in the name of Earl Russel Browder, issued on the said application as aforesaid, the defendant herein did use, and present to an Inspector of the United States Immigration and Naturalization Service, at the Port and City of New York, within the Southern District of New York and within the jurisdiction of this Court on or about the 15th day of February, 1938, to gain and secure entry and admission into the United States; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 22, Section 220, United States Code).

14

15

JOHN T. CAHILL,
United States Attorney.

16

Case and Exceptions.**UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.**

C. 106-127

17

UNITED STATES OF AMERICA**VS.****EARL RUSSELL BROWDER, alias "Nicholas Dozenberg," alias
"George Morris," alias "Albert Henry Richards."**

Before—Hon. ALFRED C. COXE, D. J., and a Jury.

New York, January 17, 1940, 10:30 A. M.

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APPEARANCES:**JOHN T. CAHILL, Esq., United States Attorney, for the
Government; by John T. Cahill, Esq., Lester C. Duni-
gan, Esq., Robert L. Werner, Esq., and Ashley J.
Nicholas, Esq.****BATTLE, LEVY, FOWLER & NEAMAN, Esqs., attorneys for de-
fendant; by George Gordon Battle, Esq., Edward I.
Aranow, Esq., and Edward Kuntz, Esq.****Mr. Cahill: The Government is ready.****Mr. Battle: The defendant is ready, your Honor.****The Court: Are you ready to impanel the jury?**

7
Motion Relating to Indictment.

19

Mr. Battle: If your Honor please, I have a motion I would like to present to the Court before the impaneling of the jury.

If your Honor please, this indictment charges that the defendant on the 30th day of April, 1937, used a passport theretofore issued to him in his own name, in the name of Earl Russell Browder, which passport had been issued on the 1st day of September, 1934, and had thereafter been renewed after two years. The indictment charges that the defendant used that passport on the 30th day of April, 1937, for the purpose of obtaining entrance into the United States by presenting the same to an immigration inspector at the port of New York. It charges that that passport was obtained upon an application made by the defendant which contained a false statement, and the charge therefore is that he used this passport on the 30th of April, 1937, for the purpose of obtaining entry into this country, having theretofore obtained it by a false statement "by reason of which," under the language of the statute, "the passport was issued."

20

Now the indictment sets forth—

The Court: May I have the original indictment. (Indictment handed to the Court.)

21

Mr. Battle: Your Honor, you will see the indictment says that on or about the 30th day of April, 1937, at the Southern District of New York and within the jurisdiction of this Court, that the defendant for the purpose of entering the United States, used and attempted to use a passport the issue of which was secured by reason of false statements which he made in the application.

The indictment then goes on to say that in this passport application the defendant stated that the statements in said application, including the statement "None" in a blank after the words "My last passport was obtained from," were true.

22

Motion Relating to Indictment.

I show you that application which I think would make that rather clearer.

Now your Honor will see that item or that entry there on that application reads as follows: "My last passport was obtained from —" and then underneath that blank are written the words "State, Washington or the foreign locality where the passport was issued." And then a blank and underneath that blank is written the word "Date" and "Is herewith submitted for cancellation." That is the end of the sentence. Then there is a blank there for another sentence with a notation under it, "If the passport is not available or not produced, state what disposition has been made of it;" or words to that effect.

Your Honor will see, therefore, that this whole statement relates necessarily to the last passport. Our contention is, and we will elaborate that in a later motion, but our contention is that there is no statement there upon which an allegation or an averment of falsity can be predicated. According to the indictment there are two ways of ascertaining what the statement is that the prosecution claims is a false statement. One would be just the mere word "None." The indictment specifically says that the statement is the word "None," in that blank. And the other would be "My last passport was obtained from, None."

24

But in either event, by any reading, it necessarily relates to the last passport, that is, to the latest passport, the passport that next preceded the issuance of this passport in question, which was issued on September 1st, 1934. So that the indictment curiously enough does not charge that that is a false statement. It simply says that the defendant stated that this statement "None" in a blank after the words "My last passport was obtained from," was true; whereas in truth and in fact as the defendant herein then and there well knew, he had previously obtained passport number 2990, in the name of "Nicholas Dozenberg," which said passport was issued on or about March 12, 1921,

Motion Relating to Indictment.

25

on an application executed at a passport agency of the Department of State at New York City, New York, on or about March 9, 1921, and had also previously obtained passport number 475085, in the name of "George Morris," which said passport was issued on or about November 19, 1927, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 17, 1927, and had also previously obtained passport number 451933, in the name of "Albert Henry Richards," which said passport was issued on or about November 19, 1931, on an application executed at a passport agency of the Department of State at New York City, New York, on or about November 18, 1931, which said passport thereafter was renewed at a passport agency of the Department of State at Chicago, Illinois, on or about November 9, 1933.

26

So that after setting forth a statement which is claimed to be the false statement, the indictment goes on to recite three previous passports which the indictment states were issued to the defendant Browder prior to this application made by him on August 31, 1934.

Now, by the allegation of the indictment of the passport issued in the name of Richards, which was issued on or about November 19, 1931, and thereafter renewed—that was the last passport prior to the passport of August 1934—and this statement which the indictment charges as being a false statement relates solely to the last passport. So that it seems clear, your Honor, that all that the Government need prove or can prove, in order to negative that statement—whatever it may mean—because whatever it means, it relates solely to the last passport—all that the Government need prove is to show that there was a previous passport issued to the defendant and, to show when that last previous passport was issued.

27

The indictment charges that the last previous passport was the Richards passport issued in 1931. So it is our

28

Motion Relating to Indictment.

29

contention that the allegations in the indictment as to the two prior passports—the passport in the name of Morris and the passport in the name of Dozenberg—are surplusage, because the statement relates only to the last passport; and according to the language of the indictment, and we are prepared to admit that that is correct, the last passport prior to the Browder passport was the Richards passport issued in 1931. So that it seems clear to us that the two allegations as to the two passports prior to the Richards passport, that is, the Morris and the Dozenberg passports, are surplusage and they are necessarily very prejudicial surplusage to the defendant, because they allege that he obtained two passports under two other names. And while there are explanations of all of these things, it is evidently prejudicial.

30

Under the practice as to dealing with surplusage in indictments, the Court has held in the Beck case, and that has been affirmed,—the Court has held in this case as to the proper procedure that where there are surplusage averments in an indictment, that the proper procedure is to make a motion calling the attention of the Court to it in advance, so that the Court may determine just what is to be done about it before the trial:

In the case of *Ford v. United States*, there the indictment charged a conspiracy to violate the National Prohibition Act and also to violate a treaty between the United States and Great Britain. Objection was made to the indictment on the ground that violation of the treaty was admittedly not a crime and therefore a conspiracy to violate the treaty was not indictable. And the Court held:

“The validity of the indictment is attacked, first, because it charges that the conspiracy was to violate the treaty, although the treaty creates no offense against the law of the United States. This is true, but that part of the indictment is merely surplusage

Motion Relating to Indictment.

31

and may be rejected." Citing *Bailey v. U. S.*, *Remus v. U. S.*; *United States v. Weiss*, and the *United States v. Drawdy*.

"The Trial Court took this view. But it is contended that this is to amend the indictment and comes within the inhibition of the principle of *Ex Parte Bain*, 121 U. S. 1. That it is not condemns the striking out of words from an indictment. The action here complained of is merely a judicial holding that a useless averment is innocuous and may be ignored."

32

So that the Supreme Court holds that surplusage averments in an indictment may be ignored and should be ignored, and that is held in a number of different cases, in the case of *Sondericker v. United States*, 41 F.(2d) 144; in *Beck v. United States*, 33 F. (2d) 107. In that case the defendants were indicted for using the mails to promote a fraudulent building financing scheme. The Court held in that case, to use the language of the Court, that there were "a cloud of other allegations that were either insufficient or unsupported by the evidence." Now the Court said:

33

"There is, however, another principle of law which holds that surplusage in an indictment may be disregarded (citing *Matthews v. U. S.*). That case, is true, dealt with surplusage incident to the main charge and did not mislead."

Now the Court says in the *Beck* case that:

"The surplusage in the present indictment"—and that is just what we claim in the situation here—"The surplusage in the present indictment is collateral to the charges already pleaded and may have misled. This situation can be remedied by the Court upon proper

34

Motion Relating to Indictment.

motion sufficiently in advance of the trial, determining what misrepresentations the defendant will be required to meet on the trial."

35

And it is on that authority that we are making this motion now, to ask that your Honor rule that these averments in the indictment in respect to Dozenberg and in respect to Morris are surplusage because the false statement relates only to the last passport, and admittedly under the language of the indictment itself the last passport was the Richards passport and the Dozenberg and Morris passports preceded the Richards passport and therefore can't be said in any sense to be the last passport.

The Court: Is it now true that Mr. Browder could have answered the question in the application blank by giving correct information with respect to the Richards passport and stop there, but then on the contrary he went farther and said "None", indicating that he had not previously obtained any passport, including the Richards passport? In other words, hasn't he himself volunteered the information which perhaps strictly speaking was not required by the application blank?

36

Mr. Battle: Your Honor, it is impossible to eliminate from that sentence the idea of its relating to the last passport.

The Court: But if you concede for the sake of the argument that he could have merely given the information with respect to the Richards passport, and thus would have complied with all of the requirements of the Department. He didn't do that, but he went a step further and he said that he had obtained no passport, or he used the word "None", indicating that he himself was volunteering the information to the Department as an inducement to issuing the passport, that he had not received any passports at all.

Motion Relating to Indictment.

37

Mr. Battle: I see exactly what your Honor has in mind.

The Court: What I am getting at, is this case restricted entirely to the information which might have been given by him by answering the questions required by the application, or should the Court not properly consider also any information which he may have volunteered which was used by the Department in issuing the passport? I am just posing the question.

Mr. Battle: I appreciate what your Honor has in mind. My answer to that is that the statement as set forth in the indictment and as appears on the application, does necessarily relate solely to the last passport. The sentence is—the language of the application says, “My last passport was obtained from” blank “On” blank, “and is submitted herewith for cancellation.”

38

As a matter of fact, I think it is apparent—

The Court: “None” is no answer to the question as it stands in any event.

Mr. Battle: I don't think it is any answer at all. I don't think it is any statement. I don't think it is any statement upon which a charge of falsity can be predicated. Whatever it is, whatever the Government may claim it means, I submit that it includes and must necessarily include, the idea of the last passport. It can't relate to anything else.

39

The Court: In the ordinary use of language I should think that the word “None” in that particular connotation, is susceptible to meaning that he had not theretofore procured a passport on an application.

Mr. Battle: The words are inserted under the blank after the words “My last passport was obtained from” the words “Insert Washington or location of office abroad.” I don't think it can be construed to relate to any passport.

The Court: I see your point. Is there any comment?

Mr. Cahill: I shall be very brief, your Honor. I think certainly the word “None,” as put in the application, by

40

Motion Relating to Indictment.

41

Browder, is susceptible of the meaning "Not any." The statute on which the indictment is based here contains requirements that we show that the false statement was knowingly and wilfully put forward and with the intent to secure the issuance of the passport. The word "None" has significance, it seems to me, on the elements of the guilty mind and the specific intent. And further than that, since the proof on behalf of the Government will show that the same scheme was resorted to in respect of each of the prior passports, namely, the use of the word "None," that it has bearing on the issue of wilfulness.

42

And if your Honor please, at this time I think that there can be no argument that it is surplusage. I think the very expression selected by the defendant was calculated to achieve the result which the word itself patently requires—"Not any."

Mr. Battle: Now, if your Honor please, your Honor will see that the question is not really a question but the statement there on the application reads "My last passport was obtained from" blank "on" blank, "and is herewith submitted for cancellation." What I am addressing myself now, to is the allegation in the indictment. On the other question of what evidence may be offered along that line, that would be another proposition. But the allegation in the indictment, the indictment charges that the false statement was the word "None" inserted in that blank just after the words "My last passport was obtained from". So it seems to me that it must necessarily relate to the last passport and cannot be said to mean that there was no passport, never had a passport. The item does not call for any such information. The item only calls for information as to the last passport, and the indictment itself goes on with the last passport in point of time, which is what that means, the latest passport was the passport issued in the name of Richards in 1931.

Motions to Dismiss Indictment.

43

It is on that ground that we claim as far as the indictment is concerned those allegations are surplusage.

Your Honor's ruling on this would not prevent the offering of evidence on that later on in the course of the trial.

The Court: I will deny the motion and give you an exception.

Mr. Battle: Exception.

The Court: Are we ready to impanel the jury?

Mr. Cahill: The Government is ready, your Honor.

Mr. Battle: May I add, if your Honor please, on the ground of the motion that I have just made, that these other allegations relate to and in effect charge other crimes that are now outlawed by the statute. May I add that to the ground on which my previous motion was made? 44

The Court: Yes.

Mr. Battle: Your Honor will give me the benefit of an exception.

The Court: Yes. We might take a recess for about five minutes until the jury comes in.

(After a short recess a jury of twelve and two alternates was duly impaneled and sworn.)

Mr. Battle: I have a memorandum that I prepared with the authorities on this motion, which I will hand up to your Honor, if you would care to see it. 45

If your Honor please, this is a motion to dismiss the indictment and for the acquittal of the defendant on the ground that the use to which the passport was put, as set forth in the indictment, is not a use that is contemplated by the statute. It does not come within the contemplation or prohibition of the statute, and therefore it does not charge, the indictment does not charge, any offense.

Your Honor will recall from your examination of the indictment that the indictment charges, I will read the language of it, that the defendant used and attempted to use a passport for the purpose of entering the United States, and that the defendant on the 30th of April, 1937,

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Motions to Dismiss Indictment.

used and presented to an inspector of the United States Immigration and Naturalization Service at the port of the City of New York, within the Southern District of New York and within the jurisdiction of this court, on or about the 30th day of April, 1937, to gain and secure entry and admission into the United States * * *.

47

So that the indictment charges a use of this passport within the United States and within this City, and for the purpose of securing entry and admission by the defendant Browder into this country. It is conceded here by stipulation that the defendant Browder was born in this country and is and always has been a citizen of the United States.

Our contention is that the statute, when it denounces the use of the application obtained by false statement, refers solely to and can refer solely to a use of the passport as such, that is, use of it as a passport—a passport use. That is the only use that is indicated in any way by the statute and under the well known rule, the word must be construed according to the context and for the—

The Court: What is the use of a passport?

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Mr. Battle: The formal use of a passport is this: a passport is for the protection of American citizens abroad. It has no function whatever, it has no use within the limits of this country. A passport is not necessary to enter or to leave, for citizens to enter or leave the United States, and whatever was done with this passport in regard to the entry of Mr. Browder into this country on the 30th of April, 1937, was not a passport use.

The Court: What kind of crime would it be if such a passport were used in the bowels of Russia?

Mr. Battle: It would be a crime which could be prosecuted in the courts of this country.

The Court: That may be so, theoretically, but what kind of crime could be prosecuted and proved and sent to a jury with respect to that particular offense which I have mentioned?

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Mr. Battle: A person could be indicted and tried in this country for a crime committed against the United States in any foreign country. That has been specifically passed on, your Honor. Our contention is—

The Court: Why isn't a passport a credential to be used when a man comes back to this country for the purpose of showing that he is a citizen?

Mr. Battle: Because the law holds that that is not a passport use. A passport can only be used outside of the country.

The Court: Can you point out to me the dicta or law 50 which announces that ruling?

Mr. Battle: Yes, I will do that. I was just speaking preliminarily and I want to go into the matter at such length as your Honor will permit, because I cannot see any answer to it as a legal proposition.

Mr. Cahill: I would like to have the benefit of a copy of this memorandum to save time. We can be looking at it.

Mr. Battle: Certainly, you may have this copy. The offense charged is the use of this passport in the manner that I have indicated and, as I say, our contention is that that is not a use of the document as a passport, and in order to take that up, to go into that, it is first necessary, I think, your Honor, to see just what a passport is. 51

Mr. Gaillard Hunt, who was United States Passport Clerk for years and who is perhaps one of the great experts on the law of passports, in his book on "The American Passport, Its History", says:

"It (the passport) is a document issued by the Secretary of State or under his authority by a diplomatic or consular officer of the United States, stating his citizenship, and requests for him free passage and all lawful aid and protection during his travels or sojourns in foreign lands.

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"It is intended only for use abroad" and has no sanctioned use, customary or statutory, within the United States in time of peace, and the request which it conveys is expected to receive recognition of the agents of the foreign governments, subject of course to the laws of the foreign governments.

"The most that can be claimed for it is, that it is a request to foreign governments to admit the bearer with the privileges and obligations of a foreign citizen."

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Professor Moore says in his work on international law:

"A passport is the accepted international evidence of nationality. In its usual form, it certifies that the person described in it is a citizen or subject of the country by whose authority it is issued, and requests for him permission to come and go as well as lawful aid and protection."

And Mr. Taylor in his book, which is an authority, says:

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"As a general rule, a citizen leaving his own country obtains from his government a passport which, so far as other States are concerned, is really no more than a certificate of citizenship with a description of his person, usually substantiated by his autograph. When such a document is presented at the frontier of a friendly foreign state, it is usual for it to grant to the bearer the right of passing through in the form of a visa entered upon the document itself, in order to obviate the inconvenience which would result if an entirely new passport were demanded at the borders of every nationality."

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Mr. Borchard:

"The passport is the accepted international certificate, or evidence of citizenship, although its evidentiary value is prima facie only * * * It certifies that the person therein described is a citizen of the United States and requests for him while abroad permission to come and go as well as lawful aid and protection."

So that a passport is directed to the authorities, the heads of foreign governments, and it is intended solely for the protection and the use of American citizens while they are abroad, while they are traveling abroad. It is not used within the limits of this country. 56

A very interesting and important pronouncement on that very subject is found in a regulation or a rule issued by President Wilson on this subject of the regulation of passports, which I will read to your Honor in a moment. President Wilson in 1915, in rules and regulations governing the issuance of passports, says:

"Passports issued by the Department of State or its diplomatic or consular representatives are intended for identification and protection in foreign countries and not to facilitate entry into the United States, immigration being under the supervision of the Department of Labor." 57

The authorities all hold that a use must be read and must be construed according to the context and to further the purposes of the statute, just like any other term used in the statute would have to be construed. So that the use that is indicated here in this statute is the use of the document as a passport, a passport document.

In the case of *State v. Stockwell*, 23 North Dakota—in that case the statute authorized the State Superintendent.

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ent of Public Construction to use certain funds, and he claimed that that statute gave him the ownership of the funds—and the Court said:

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“On the contrary, we find the words ‘use’ and ‘to be used’ must be construed with the context. As an instance, such terms in insurance law mean occupancy; in real estate transfers and the interpretation of wills and devises the word ‘use’ often is interpreted as a trust; while in ordinary language to use is to employ, to derive service from; to ‘use’ moneys is to pay out or disburse them.”

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They held that “use” there did not mean ownership.

In the case in New York, *People v. Ryan*, Appellate Division, where the Court was considering the effect of a statute which made it a crime for a person, without the consent of the owner, to use a milk bottle which had the name of the owner stamped on it, the question arose as to whether the purchaser, the man who purchased the milk bottle, used the bottle, and the Court held that the word “use” must be construed according to the context in order to further the purpose of the statute and therefore it applied only to the seller and not to the purchaser.

There are a number of other cases along that same line which are cited in my brief.

There is a statute making the use of a building for immoral purposes a crime and the Court held that proof of one or sporadic acts did not bring it within the statute, that the “use” implied long, permanent and a persistent use of a building for that purpose, in order to bring it under the statute.

So in this case the word “use” means “use” of a passport as such, and the cases hold that citizens do not need any passport to come into this country; that is, under the

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Constitution, in the slaughterhouse case, the Supreme Court said:

"Under the Constitution citizens have free right of access to come and go, and specifically held that no passport is necessary for a citizen either to enter or to leave the country."

The charge in this case is that Mr. Browder, having this passport issued to him in his own name, presented that passport to an immigration commissioner here in the City of New York, within the limits of the City of New York, and presented it for the purpose of gaining entry into this country. That is not a use that a passport could be possibly used for. The passport gave him no right whatever to enter the country or to leave it. He did not need the passport. The only thing, the only function that the passport served there was to indicate to the immigration inspector his identity and that he was a citizen.

62

The cases hold that a passport—the weight of evidence is—there is some difference of authority—but the weight of the authority is that a passport is not legal evidence of citizenship, but, of course, it is such evidence that an inspector might receive when he was determining whether a man was an alien or a citizen, but that is not a use of the passport as such. It is not the use of it as a passport. A passport might be used within this country by a man who went to the post office to cash a money order, he might produce his passport to show or to prove his identity, just as he might produce a letter addressed to himself or produce a birth certificate; or if a man went to a bank in this country for the purpose of cashing a check or draft, he could produce a passport to identify himself, and that was all he did when he produced this passport before this immigration inspector. He did not come into this country; he was not allowed to come into this country by virtue of

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the passport. The passport did not authorize his entry. The passport could not authorize his entry. He had a right to enter without a passport or without any document. The only function that the passport served there was some evidence to the immigration inspector that he was a citizen, and that is not a use of the document as a passport.

It says in the slaughterhouse case, that I just cited,

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"It is said to be the right of a citizen of this great country protected by implied guaranties of its constitution 'to come to the seat of government to assert any claim he may have upon that government, to prosecute any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has a right of free access to its seaports through which all operations of foreign commerce are conducted.' "

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And then, as I say, President Wilson in that regulation which I have just read, says that "passports issued by the Department of State or its diplomatic or consular representatives are intended for identification and protection in foreign countries and not to facilitate entry into the United States, immigration being under the supervision of the Department of Labor."

And Mr. Hunt says, "The passport is intended only for use abroad and has no sanctioned use, customary or statutory, within the United States in time of peace."

Professor Moore says, "There is neither law nor regulation in the United States requiring those who resort to its boundaries, to produce passports. Since the foundation of the government such documents have never been required except in time of war."

I have cited there several opinions of the Attorney General. One or two hold that a passport is not necessary for a citizen to enter.

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The Court: I should like to hear the other side.

Mr. Cahill: If your Honor please, a good part of the argument assumes the question of use within the United States, and, of course, that is not the case here. The case here has to do with gaining entrance into the United States and gaining entrance in both instances from British boats.

What the argument comes down to, as far as I can grasp it, is that if a man elects to use a given set of credentials to gain entrance into the United States, and it should turn out to be the fact that those credentials have been obtained on the basis of a false statement, that then he can stand up in a court in this country, when he is charged with so doing, and say "Well, that does not make any difference because I could have gotten in legally another way."

68

Let us take the case of a man who gets in on a birth certificate that he has obtained by reason of a false statement, a man who, in fact, was born here, let us say, and when he is brought to the bar of justice for having used a birth certificate falsely obtained, he says, "Well, it isn't anything that was contemplated by statute, because I could have proved in any event by affidavit that I was born in this country." I say to you, sir, that this man elected to use a passport as the method of evidencing his credentials and his right to come in, and that that was a use for which, or to which a passport could be put, and is commonly used by returning travelers from abroad, and it was clearly contemplated within the statute as a use.

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Mr. Battle: Mr. Cahill is mistaken in saying it was not used within the limits of this country. The indictment expressly says that this use was within the Southern District of New York, within the jurisdiction of this court, and the use of the passport was within this country. And there is one fact, your Honor, that shows with the greatest force and conclusively that a passport cannot be used as a means of getting into, a means of securing entrance into this country in times of peace. Up to 1918 the law was

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just as I have stated it here, a passport cannot be used and is not necessary to be used and cannot be used to secure entry into the country. When the war came on in 1918, a law was passed, Section 224, as a war measure, which made it illegal for citizens to enter or to leave the country without a valid passport, and that law remained in force until 1921, when it was repealed by statute. It was a war measure and at the close of the war it was repealed, and it was said that that provision applied only to aliens, so that the law became in 1921 what it always was up to 1918, to-wit, that a passport could not be used to secure the entry of a citizen into this country.

The use of a passport set forth in this indictment is the presentation of a passport to an immigration inspector, so the immigration inspector could receive it, if he so chose, as evidence or some evidence as to whether the man was an alien or a citizen. If he found him to be a citizen, then the inspector ceased to have any jurisdiction over him—he had no control over him.

72

The Court: Supposing Mr. Browder delivered the passport to an alien, or, to use the language of the statute, furnished it to another for use for entrance into this country, would you say that was not a use contemplated by the statute?

Mr. Battle: I did not quite follow your Honor.

The Court: The statute applies to whoever shall wilfully or knowingly use or attempt to use or furnish to another to use, any passport—

Mr. Battle: The indictment charges—

The Court: I say, you say this is a case of a citizen who can come in without credentials and therefore that it does not apply to him, but suppose that he turned the passport over to someone who was an alien, and the alien used it for the purpose of gaining admission to this country? Would that be a proper use?

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Mr. Battle: Oh, yes, I think that might be an improper use, your Honor.

The Court: Wouldn't that be a use as covered by the statute?

Mr. Battle: I have not given that consideration, your Honor, because the indictment charges Mr. Browder himself presented it.

The Court: I understand that. I was stating a supposititious case.

Mr. Battle: The indictment charges Mr. Browder himself applied for and got the passport.

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The Court: I understood he did.

Mr. Battle: He himself presented the passport.

The Court: I understood.

Mr. Battle: As I have said, I think the passage of that Act in 1918 which required a citizen, as a war measure, to present a passport in order to enter or to leave the country, and the repeal of that Act in 1921, after the war was over, is conclusive evidence that excepting during those three years, the passport could not be used and was not used.

The Court: I cannot believe that this statute has any such limit of interpretation as you seek to place upon it.

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Mr. Cahill: There are some cases on page 21 of Mr. Battle's memorandum which I think throw great light on the subject and I cite particularly the case Mr. Battle cites at the top of the page.

Mr. Battle: I am going to get to that.

Mr. Cahill: If I may just continue for a second. I read particularly the quotation from that page. That case refers to this man Baglivo, who was a native born citizen of this country, and it says:

"The fact that Baglivo improperly used a passport which was wrongfully taken from the office of the Consul General in Naples and that he may have com-

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mited perjury in his endeavor to gain admission into the United States may afford ground for criminal prosecution. It does not afford ground for the exclusion of one born in the United States, who has never renounced his allegiance thereto."

I will stand on the proposition of law there enunciated.

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Mr. Battle: That is just what I say. If this charge were against Mr. Browder for securing the passport illegally, that would be entirely true, but here the charge is using it, and in this case, in this Baglivo case, the court held that the passport was so immaterial, so useless in respect to securing entry of a citizen into this country, that even the fact that the person presented a fraudulent passport would not be considered. It is the strongest kind of authority that the passport has no function whatever in securing his entry. That was a case decided by Judge Bondy in this court.

In the Circuit Court of Appeals, in the First Circuit, Judge Bingham held, citing the same case:

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"It is evident that, if Camardo, as his evidence clearly tended to show, is a citizen of the United States, the fact that he possessed a fraudulent permit and passport would not be ground to refusing him admission to the country, whether his possession of that was or was not a violation of law."

As I say, if this was a charge against Mr. Browder of having made a false statement, or of having committed perjury in securing this passport, that language would be perfectly applicable, but the significance of those authorities is that the passport itself is so useless, has so little function, no connection whatever with the entry of a citizen into this country, that he would be allowed to enter, even if he presented a fraudulent passport.

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The cases are perfectly clear, your Honor, on this. It is perfectly clear that the use contemplated in this statute is a use as a passport. It is not a use of the passport as a means of identification within this country, it is a use of a passport in a foreign country where only a passport has proper function and use.

On that point that your Honor raised as to the fact of the difficulty of prosecution in a foreign country, that question has come up in two cases in the Supreme Court. One was the Bowman case, in which a man was in Brazil, who had embezzled the funds of a corporation which belonged to the United States, and his offense therefore was an offense in a sense against the United States, and Chief Justice Taft held in that case.

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"While the legislation of the congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States, the question of its application, so far as citizens of the United States in foreign countries are concerned, is one of construction, not of legislative power."

And then he goes on to hold that where the offense is one against the United States that any statute, any penal statute has jurisdiction and can be applied all over the world, in any country in the world. It says:

81

"Others (i. e., offenses) are such that to limit their locus to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make a specific provision in the law that the locus shall include the high

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seas and foreign countries, but allows it to be inferred from the nature of the offense."

In the Blackmer case, the Court followed that same doctrine. In that case Blackmer was in Paris and he was sought to be punished for contempt of court, and the court held that he could be reached; although he was in Paris and though process was served on him, the Supreme Court held it was valid and he was fined.

83 Mr. Cahill: I must differ right there. I would not like to go any further on that line of argument. The Blackmer question was on the legality in establishing the jurisdiction of the Senate of the United States, and there was a fund in this country which the Government was allowed to levy a fine upon.

The Court: I do not pose the question as finely as you have, but it was rather addressed to the fact that in such a case there would be a very practical difficulty about prosecution, if they had to go and find the evidence in the bowels of Russia. That is the question I raise.

84 Mr. Battle: If your Honor please, the question here is whether this use which the statute denounces is a passport use—a use of this passport as a passport.

The Court: It is a little bit broader than that, whether this statute by its terms was intended to be limited to the particular things that you mentioned. I do not believe that it was. It seemed to me that that would strip it of all its effect entirely. However, I am quite willing to take it under advisement until this afternoon.

Are there any other motions? You mentioned four or five more. I think we had better get them all at once.

Mr. Battle: There is a memorandum on the question of jurisdiction in foreign countries, and I should like also, in addition to the other grounds which I have made, I would like to add this to the grounds: we further respectfully submit that if the statute be construed so as to re-

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quire a citizen to obtain or use a passport for the purpose of entering into the United States, and that the use mentioned in Section 220 includes the use for the purpose of entering into the United States by citizens of the United States, then the statute upon which this indictment is based is unconstitutional, being in contravention of the principles underlying our Constitution and its Amendments, and particularly the Ninth Amendment.

This motion, if your Honor please, is to dismiss the indictment and for the acquittal of the defendant upon the ground that the indictment does not set forth any false statement. Your Honor will recall that in this— 86

The Court: That has already been argued on that theory this morning and I think the disposition of the first motion you made should properly cover this one.

Mr. Battle: I would like to make them specifically on this ground now.

The Court: Yes.

Mr. Battle: That the statement in the indictment, the alleged false statement in the indictment, is so vague and indefinite, so uncertain and so meaningless, that no charge of falsity can be legally predicated upon it, and conceding that the statement as set forth in the indictment is what must control, there would be only two possible statements. One would be the word "None" and the other would be the words "My last passport was obtained from—None." I respectfully submit that neither one of those is a statement sufficiently definite to have a definitely sufficient meaning to justify any claim of falsity thereon. 87

The cases all hold that in the case of a false statement, or even in perjury cases, there must be a clear, definite statement, some definite meaning, in a penal proceeding, and in an indictment, and here we submit there is no false statement sufficiently definite to bring it under the statute. We submit this indictment should be dismissed and this defendant should be acquitted on the ground that the in-

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dictment itself does not set forth any false statement upon which a charge of falsity can be predicated.

The Court: I will deny that motion and give you an exception.

Mr. Battle: All right, sir. The next motion, if your Honor please, is to dismiss the indictment and for the acquittal of the defendant on the ground that it appears on the face of the indictment that the offense is barred by the statute of limitations. It appears on the face of the indictment that this application for the Browder passport was made on August 31, 1934, which, of course, is more than three years before the date of the finding of this indictment.

The Court: The two offenses charged were alleged to have occurred in 1937 and 1938.

Mr. Battle: The use.

The Court: The use. That is the only thing that is being tried and, as I understand it, the whole basis of your argument up to the present time.

Mr. Battle: The use is essential. Use is the climax, but the offense charged consists of very definite elements. One is the making of a false statement itself, and the other is the procurement of the issuance of a passport by reason of that false statement. Both of those are barred by the statute and they are both essential elements. It is not a case of continuing offense, and where two essential, separate and distinct elements are barred by the statute, we submit that the whole offense is barred.

The Court: I will deny that motion and give you an exception.

Mr. Battle: The next motion I have to present to the Court is to dismiss—

The Court: I do not like to interrupt you, but I am afraid I was a little bit hasty in thinking we could dispose of these motions before we had lunch.

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Mr. Battle: Yes, sir.

The Court: And I am rather wondering if perhaps it would not be a good thing to suspend at this time until this afternoon?

Mr. Battle: That will be entirely agreeable to me.

The Court: May I suggest in the meantime that you give Mr. Cahill or Mr. Dunigan, or both of them, copies of these motions which you are proposing to make.

Mr. Battle: I will do that with pleasure. I have given them copies of those I have already made and I will give them those now that I have to make.

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The Court: How many more altogether are there?

Mr. Battle: Four.

The Court: We will have to handle the jury the best way we can, I suppose.

We will take a recess until two-fifteen.

(Recess until 2:15 p. m.)

(Afternoon session.)

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Mr. Battle: If your Honor please, I would like to have it appear on the record that the motions which were made before related to both counts of the indictment. Sometimes I mentioned only one. Each motion was intended to be directed to both counts.

The Court: Yes.

Mr. Battle: I should like to add, as a supplemental ground to the motion to dismiss on the ground that the indictment does not sufficiently set forth any false statement that this indictment is so vague and indefinite in its language and so meaningless that it does not constitute due process under the fifth amendment of the Constitution, and also on the supplemental ground that if the

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statute upon which this indictment is based is to be read and interpreted so as to authorize the President and the Secretary of State to proscribe by rule that a person applying for a passport must disclose the fact that he had previously obtained a passport illegally and the rule be construed as making such requirement and the failure to make such a disclosure as a false statement within the rule and the statute, then both the rule and the statute under which it was made would be unconstitutional and in contravention of the Constitution against self-incrimination in the

95 Fifth Amendment.

I move, if your Honor please, to dismiss the indictment and for the acquittal of the defendant on the ground that in this case the renewal, the application for the renewal of the passport of 1934, the passport which was issued on September 1, 1934, to the defendant, Earl Browder, was in effect an application for a new passport, and that that application for the renewal did not contain any allegation in regard to previous passports and that, therefore, there is no violation which can be charged of Section 220.

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In that connection I call to your Honor's attention the fact that in this application for renewal which, together with the application for the original passport, has been stipulated in evidence between Mr. Cahill and myself, and we have also, I may say, entered into a stipulation to the fact that Mr. Browder was born in Wichita, Kansas, and he is and always has been a citizen of the United States, in this application for renewal, your Honor will notice that the form has this clause, "Application and passport submitted for consideration by blank agency on blank date". So that the usual application for renewal contains within it the old passport and the application for the old passport, so that the application for renewal may be considered as a repetition or as a restatement of the grounds charged in the application for the original paper. In this renewal, for some reason that wasn't shown, your Honor

will see from examination here that those lines, "Application and passport submitted for consideration," are stricken out. So this application for renewal does not contain within itself any repetition or restatement of the averments contained in the application for the original passport, and it is just as if there was an application for a new passport based solely on this petition for renewal, which your Honor will observe has no statement in it concerning previous passports, and we submit, therefore, that this application for renewal was in fact an application for a new passport made on an application which does not contain any statement as to previous passports. Therefore—

The Court: I will deny that motion.

Mr. Battle: Will your Honor give me the benefit of an exception?

The Court: Yes.

Mr. Battle: The next motion which I wish to address to the Court is a motion to dismiss the indictment and to acquit the defendant upon the ground, generally speaking, that Section 220 relates only to illegal passports, that is, it relates only to passports issued to persons not owing allegiance to the United States. Your Honor will recall that only passports can be issued to persons owing allegiance to the United States. The language of this section, Section 220, indicates that it applies only to passports issued to aliens, passports which are inherently and are themselves illegal. The section reads, "Whoever shall wilfully and knowingly make any false statement in an application for a passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall wilfully and knowingly use or attempt to use or furnish to another for use any passport the issue of which was

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secured in any way by reason of any false statement, shall be fined or imprisoned." The language of that statute indicates that it applies only to passports which are issued contrary to the laws regulating the issuance of passports, or the rules prescribed pursuant to such laws.

There are only two kinds of passports that are inherently illegal. One is a passport issued by an unauthorized official and the other is a passport issued to someone who has no right to receive it—an alien. There is no question in this case about the authority. So, so far as this case is concerned, the only illegal passport is a passport issued to aliens. This statute, 220, was passed in 1917—June, 1917, just after we went into the great war. It was a war measure. It was intended to prevent the issuance of passports to aliens who could use those passports for espionage purposes, as spies and otherwise, and the language indicates that this section is intended only to apply to passports issued to aliens, because they are the only passports that are issued contrary to the law regulating the issuance of passports or the rules prescribed pursuant to such laws.

If it be said that the making of the false statement would require or would result in a passport contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, the answer is that such a clause would be entirely unnecessary in that event because the statute itself prohibits and makes illegal the making of the false statement, and the object of the statute, in view of its history, and in view of its language, we submit, is to penalize any person who makes a false statement in an application in order to get a passport for an alien. In this case Mr. Browder was not an alien. He was an American citizen. Therefore, the statute does not apply to us because—

The Court: I am afraid I do not quite follow you. I understood you to say before that the statute, as you interpret it, applied to anyone who wanted to use it in a

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foreign country, whether he be a citizen or an alien. Now you say it is limited to aliens.

Mr. Battle: Your Honor misunderstood me. I did not make myself clear. I said that the passport could be used—a passport can legally be used—the legal use of a passport is only without the limits of this country, that is, abroad, and, of course, it can be legally used only by a citizen. It cannot be issued to anybody except a person who is a citizen.

My point here is that under the language of this statute, which limits it to passports issued contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, that that restricts the passports contemplated and included in this section—restricts it to passports issued to aliens.

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The Court: I do not find anything in the language of the statute to support that contention.

Mr. Battle: If your Honor will study the language there and see the words—

The Court: I looked it over very carefully during the lunch hour and I did not find anything in the language to support that contention. You have spoken about 1917 and the history of it, but I do not know anything about that. I will deny that motion.

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Mr. Battle: Your Honor will give me an exception?

I move to dismiss the indictment and for the acquittal of the defendant upon the ground that it appears on the face of the indictment that the alleged false statement was not and could not have been such a statement that by reason thereof a passport was issued. The statement we discussed already, the form of the statement. The fact that it consists of the word "None" written in in that blank in the sentence which reads, "My last passport was obtained from blank on blank and is submitted herewith for cancellation", that is, as we contend, an administrative

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regulation. It is not a material averment in the application. Your Honor will see from the sequence of the different items and entries in the application that the first half of it—

The Court:.. Now you are arguing a question of fact, are you not?

Mr. Battle: "No, sir, I am saying the language of it is such, and the context—I will just finish what I have to say on it—it is apparent from the language that that is merely an administrative regulation calling for the presentation and the delivery for cancelation of a passport and, therefore, that it is not an election or any statement by reason whereof the application was issued.

The Court: I understand you to say that the department has no right, really, to ask such a question?

Mr. Battle: No, sir, I say it is not a question. It is simply a statement. That language assumes that a passport was issued and calls for its cancelation, and I submit that it is not a false statement by reason of which the passport was or could have been issued.

The Court: I think the ruling on one of the previous motions is probably sufficient to cover that. I will deny that motion.

Mr. Battle: Your Honor will give me an exception? That is all, your Honor.

The Court: I made no disposition with respect to one of these motions and I will therefore deny that one, which I think was the one in which you asserted that the use alleged in the indictment was not within the language of the statute.

Mr. Battle: Yes, not within the purview or contemplation of a statute.

The Court: I will deny that motion and, of course, give you an exception.

Mr. Battle: Thank you.

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The Court: Anything more?

Mr. Cahill: No. All I would like your Honor to do is exclude all witnesses from the courtroom during the course of the trial.

The Court: Yes. Where do you want them kept?

Mr. Cahill: There is a witness room, 122, your Honor.

The Court: You are referring only to government witnesses?

Mr. Cahill: I am referring to witnesses for both sides.

The Court: Should they all be put in the one room?

Mr. Cahill: I have no objection to that, your Honor. 110

The Court: I will exclude all witnesses, then, from the courtroom.

(The Clerk announced that all witnesses should retire from the courtroom and remain in Room 122.)

The Court: You had better bring the jury in.

(The jury returned to the courtroom.)

Mr. Cahill: May it please the Court, Mr. Foreman and ladies and gentlemen of the jury, at the outset of every criminal trial it becomes the duty of the United States Attorney, who presents the evidence on behalf of the government, to describe to the members of the jury the nature of the charge or accusation on which the defendant is now about to be tried. 111

It is further the duty of the United States Attorney to outline in a general way to the members of the jury the evidence which the government expects to produce in support of that charge.

The charge or accusation in this case, as in all criminal cases in this court, is brought in the form of an indictment returned by the Grand Jury of this district. The indictment in and of itself has no probative force whatsoever. Its only purpose is to apprise the defendant of the charge made against him and to define the issues between the defendant and the United States Government.

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Eloquence and oratory have no proper place in an opening, nor is an opening at the same time the place for the government to try its case. Its purpose is merely to outline the charge and the proof, and I intend, on behalf of the government, to adhere to that purpose.

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Let me say in preliminary fashion, still further, that in the conduct of this, or any other trial, the court and the court alone is the judge as to the law and if at any time during this opening, or during the opening of opposing counsel, any reference should be made to the law, it will only be for the purpose of clarifying the facts and not with any intention whatsoever of invading the exclusive province of his Honor who presides at this trial.

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Still, further, if in reference to the facts at any time anybody on behalf of the United States should say anything in this trial which is not borne out by the evidence that you hear from the witness chair, you should disregard it, just as much as I would expect you to disregard any statement of opposing counsel as to the evidence which was not borne out by what the witnesses said, because what any lawyer says in this trial is not evidence in any way. The only evidence we get here is from the witnesses as they are sworn.

Further than that, if any counsel makes a statement as to the evidence which does not accord with your recollection of what the evidence was, it is your recollection that governs and nobody else's.

During this opening I do not intend to advert to every item of proof that the government will produce. The purpose is merely to high spot a framework of the evidence to enable you to follow the case more understandingly.

Before going into the evidence in the trial itself, in order that you may get acquainted with the men at the government table, let me say that the gentleman sitting next to me is Mr. Lester C. Dunigan, the Chief of the

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Criminal Division of my office; next to him is Mr. Robert L. Werner, Assistant United States Attorney and next to him is Mr. Ashley J. Nicholas, of the Department of State of the United States.

Turning now to the indictment, the indictment as you have heard, is in two counts. It names as defendant Earl Russell Browder, who sits at defendant's counsel table, with a mustache and his hand about his face. The charge set forth in each count is the use of a United States passport, the issue of which was obtained by false statement. The first count of the indictment alleges that on April 30, 1937, Browder entered the United States at the Port of New York on a passport secured on an application containing a false statement. The second count charges that Browder repeated this offense on February 15, 1938. With the exception of the difference in the dates of use, which I have pointed out, the one being April 30, 1937, the other being February 15, 1938, the two counts in the indictment, with the exception of the dates, are identical.

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I might say to you in further preliminary fashion in regard to the evidence in this case that the government has elected and will rely on documentary evidence, and for the very most part the government's case will be based on the papers themselves. The handwritten portion of these papers we will show you is in essential part in the handwriting of the defendant Browder. In presenting the government's case to this jury we will, of course, begin with testimony as to the methods of procedure in the Passport Division of the Department of State of the United States Government, because it is the Department of State of the United States Government that is charged with responsibility as to the issuance of passports.

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Now the proof is of a kind for which I bespeak your closest attention because it is my opinion that a comprehension of those methods of procedure is necessary for

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your understanding of the activities of Browder in regard to the particular passports which Browder obtained. Or to put it in the converse form, the proof as to the methods of the State Department is necessary for your comprehension of how Browder accomplished the crime he is accused of committing in this indictment.

While I shall not go into the detail of that at this time, briefly, when an American citizen applies for an American passport he must comply with two requisites. He must submit proof that he is an American citizen, because American
119 passports are solely for the use and protection of American citizens while traveling. Second, he must produce proof that he is the person who is named in the application for the passport, that is, proof of identity.

Now that is all pursuant to the provision of law which is set forth in Title 22, Section 213 of the United States Code, and with the Court's permission I shall read it in pertinent part. The first paragraph, which is the part we are interested in here, provides "before a passport is issued to any person by or under the authority of the United States such person shall subscribe to and submit a written application duly verified by his oath before a
120 person authorized and empowered to administer oaths. Each said application shall contain a true recital of each and every matter of fact which may be required by law or by any rule authorized by law to be stated as a prerequisite to the issuance of any such passport."

You have just heard from a reading of that section of the law that the application must contain a true recital of the facts, and the facts which the application for passport inquires about have to do not only with the identity of the applicant for the passport, but as well with his relationships by blood and marriage and statements as to his immediate family history. And finally, and most important of all, the application requests a statement as to when the applicant had his last passport. The purpose

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of this information is to enable the State Department to have before it such data before it invokes the safe conduct which the American passport is supposed to and does guarantee to American citizens. Again, not only is proof by the applicant himself required in connection with the applications for passport, but as well supporting data by way of affidavit of persons who have known the applicant, and still further, data as to his native birth in this country, or in the case of a foreign born person information as to his naturalization.

And lastly, the applications provide for the photograph of the one who is seeking the passport. 122

The proof in this case will show that on three separate occasions Browder obtained passports of the United States on which his picture appeared.

Mr. Battle: Pardon me just a moment. I just wish to reserve my rights. I wish to renew the objection already made in the motion to any statement concerning the Dozenberg or Morris passports, or the applications on the ground that it is immaterial, not within the issues of this case, that it is too remote, that it is highly prejudicial and incompetent.

The Court: Denied.

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Mr. Battle: I except, your Honor.

Mr. Cahill: Now, the proof will show in this case that on three separate and distinct occasions Browder obtained passports of the United States on which his picture appears and that he obtained those passports under the name, first, Nicholas Dozenberg, born in Russia, so the application states; next, under the name of George Morris, born in Lawrence, Kansas; and next, under the name of Albert Henry Richards, stated in the application to have been born in Oshkosh, Wisconsin.

Our contention on behalf of the government is that Dozenberg is Browder in that passport; that Morris is

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Browder in that passport; and that Richards is Browder in that passport. We will show you further that in the Nicholas Dozenberg application the citizenship papers, that is, the naturalization papers of Dozenberg, were produced and were shown to the State Department agency at the time Browder obtained the passport in the name of Dozenberg. We will show further that in the case of the George Morris passport the date of birth given for Morris was May 20, 1891, which in truth and in fact was Browder's own birthday, and that Lawrence, Kansas, which was assigned as the place of this man's birth, was in truth and in fact the place where Browder himself was born, in Wichita, Kansas, on the very date assigned. And, again, in the Richards' application it will be shown that after stating that Richards was born in Oshkosh, Wisconsin, he produced what purported to be a birth certificate of this Albert Henry Richards. I might say that in the Morris' passport the proof as to the birth of Morris was supplied in what purported to be an affidavit of Morris' mother, one Martha Morris, as to the birth of the applicant Morris. We will show that the oath to the statement of this Martha Morris was taken by one J. L. Perrilo, who at that time was, employed in the New York office of the Communist Party. Our proof will further show that in 1921 during the life of the Dozenberg passport—because a passport has an original period of validity of two years and it may be renewed any time within four years of its issue, so that upon the renewal it has a life of a full four years. We will show you that while the Dozenberg passport was still alive Browder was visiting in Moscow, and that again in 1933, during the period of validity of the Richards' passport our proof will again show that Browder was present in Moscow. And, finally, our proof will show in this connection that at none of those times did Browder have any passport of the United States in his own name.

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Carrying this a bit further, our proof will show that on or about 1933 Browder came the better to be known, and that on August 31, 1934, Browder appeared in person at the office of the Passport Agency of the Department of State and applied for the first time for a passport in his own name, although at that time, you will recall according to the government's contention, he had had these three previous passports in the names Dozenberg, Morris, and Richards, and on that occasion August 31, 1934, Browder gave for the first time the true information as to his native birth in Wichita, Kansas, the date of it, May 20,

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1891, and the correct facts as to his family in response to questioning on the application. But when Browder came to the all-important question on that application, and I quote "My last passport was obtained from" he answered that question with the same invariable word, that he had answered the same question in each of the three earlier passports, namely, the Dozenberg, the Morris, and the Richards passports. He answered that with the word he had used on each of those occasions and that word was "None".

Now mind you, ladies and gentlemen, I repeat that: on each of these occasions in answering that question on the passport application "My last passport was obtained from" Browder answered the question with the word, the same word each time, "None". Now, the matter of the dates here is important. Bear in mind that on September 1, 1934, he got a passport in his own name for the first time. Now at the time he did that the Richards' passport, which was also a United States passport, was still valid and would continue to be a valid passport until November 19, 1935, for the reason that on November 9, 1933 the Richards' passport was presented at the office of the Passport Agency in Chicago. The office of the Department of State in Chicago had that Richards' passport presented to it, and there the Richards' passport was renewed so as to be effective for the full four years. You will recall that

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the date of issuance of that Richards' passport was November 18, 1931, so giving it its full four years of validity, which is what the renewal did, it would expire beginning on November 19, 1935. Therefore, from September 1, 1934, the date he first got a passport under his own name, until November 19, 1935 Mr. Browder had issued to him two valid passports of the United States—one in the name of Richards and the other in the name of Browder—available for use, either one of them, as he elected and saw fit, both carrying the seal of the United States of America, and asking safe conduct on behalf of our government for one of our citizens. I quote the language of the passport:

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"I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern, to permit safely and freely to pass and in case of need to give all lawful aid and protection to"—

and in the Richards' case, it would be Richards; and in the Dozenberg case, it would be Dozenberg; and in the Morris' case it would be Morris—"a citizen of the United States".

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Now, I have nearly done. The government will call here on the witness stand persons to prove what we have outlined in this our opening. Further, we will put on the stand a government handwriting expert who will compare the handwriting on all these applications, the Dozenberg, the Morris, the Richards, and the Browder applications, and will testify before you that the handwriting in all of them is the handwriting of the defendant here on trial, Earl Browder. Still further, as to the passport in Browder's own name, which was obtained on September 1, 1934, on the basis of the statement that Browder had no passport before, which is the statement that he had repeated each time that he had "None", we will show you that that passport in his own name was used to enter

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the Port of New York on April 30, 1937, that passport, too, having been extended so as to give it validity for a period of four years. And we will show you that that passport was again used on February 15, 1938, to enter this port. We will show you that the first time Browder came in as a passenger on the SS Berengaria and the second time when he came in he came in as a passenger on the SS Aquitania.


Our case, although documentary, will not take long to present. I ask your earnest attention to the proof. We are here to try a passport case and we are going to confine ourselves to the passport issue. We are not going into the motives for the doing of these things, because we are here to try facts, and we intend to stick to the facts and not go into the speculative realm. We will show not only the use of false names, false birth dates, false affidavits as to birth, the use of the citizenship papers of another, but as well that this bulk of applications and fraudulent material was presented for the purpose of obtaining safe conduct of the United States in the form of its passport.

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We, on behalf of the government, feel that when you have heard all the evidence, the evidence and that alone will convince you of the guilt of this defendant beyond any reasonable doubt.

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Mr. Battle: May it please the Court, and ladies and gentlemen of the jury. As Mr. Cahill has indicated to you, it is the function of an opening talk such as this to give an outline of what the prosecution expects to prove. And then the defense gives an outline of what its attitude will be. Now it is manifestly impossible for the defence to tell in advance just what it expects to do until the end of the prosecution, until we know what the prosecution is going to be. We don't know what that is going to be, and, of course, we will have to be guided and directed according to how the evidence for the prosecution develops.



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And so I can't, and I shall make no effort, to state to you in detail now just what all the facts will be in regard to the defense. It would be impossible. But there are certain points which I can bring to your attention and which are, I think, of the utmost importance.

137 In the first place, it is essential at the beginning for you ladies and gentlemen to understand just what it is that you are trying here. You are not engaged in a general investigation as to what names may have been used in the issuance of passports. You are engaged in trying a specific charge, a specific issue; and that issue, the charge, is set out in the indictment and you have to determine whether the prosecution proves beyond a reasonable doubt—to your satisfaction beyond a reasonable doubt whether the prosecution has substantiated those charges.

138 Now, there is not a word in the indictment nor is there a word in any charge about any other name being used other than his own by the defendant. The charge in the indictment is this, and it is very simple and direct, and I ask you, ladies and gentlemen, to keep your attention directed on that all through the introduction of the testimony, as to just what this man is being tried for, because that is the only thing that you, of course, will have to determine. He is being tried not, as I say, for using any other person's name in any application for a passport; he is being charged with having used in order to obtain entrance into this country first on the 30th of April, 1937, and after, as I recall the date, on the 15th of February, 1938, with using a passport issued in his own name, issued to himself, a passport in which he described just who he is. And he is being charged with using that passport to obtain his entrance—to secure his entrance in this country. That is all that he is charged with. It is charged in the indictment that this passport which was issued to himself, issued on his own application, that this passport was presented by

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him to an immigration inspector and that he thereafter landed in this country. Now the false statement which he is alleged to have made does not relate in the least to the use of any other name. Mr. Cahill and I have stipulated as to the application which Mr. Browder made for this passport. That application was made on August 31, 1934, and it was on that application that a passport was issued to him on the following day, September 1, 1934. And it was renewed thereafter, and we have stipulated as to those applications, the application and the renewal, and they are both before you, and with the permission of the Court I would like to hand each one of the jury a copy of this photostat.

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Mr. Cahill: I think we ought to wait for the proof to go in in an orderly fashion.

Mr. Battle: I can show this to them or I can—

The Court: What is it? The application?

Mr. Battle: I would like to ask permission of the Court to give the jury a photostat of this application.

The Court: Which application is it? The one of 1934?

Mr. Battle: The one of 1934, yes.

The Court: I can see no reason why you should not.

(Mr. Battle handed a photostat to each juror.)

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Mr. Battle: Now, you will see here from this application which was dated on August 31, 1934, and on which the passport was issued, as you will see by the stamp up at the righthand side, on September 1, 1934, that Mr. Browder said:

"I, Earl Russell Browder, a Native Citizen of the United States, hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Wichita, Kansas, on May 20, 1891; that my father William Browder was born at Kentucky and is now residing at 1601 No. Morrell, Englewood, Missouri.

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"I am domiciled in the United States, my permanent residence being at 2714 Wallace Avenue in the City of New York, State of New York."

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And may I call your special attention to this next sentence, as this was before any writing was put on the application blank, as it was originally when it was given to Mr. Browder, one of these questionnaires with which we are unfortunately too familiar with now. Many of my friends complain to me that now about all they do is sign questionnaires. When this questionnaire was given to Mr. Browder it read this way: "My last passport was obtained from blank on blank." Now that is all that is mentioned in the indictment. "My last passport was obtained from blank on blank", and that is all Mr. Cahill mentioned in his address to you. But you will see that that is not all of that sentence. That sentence goes on: "My last passport was obtained from blank on blank and is submitted herewith for cancelation." There is no question asked there. There is no statement as to whether or not he had had a previous passport. He is not asked to state that at all. It is simply an assertion, "My last passport was obtained from blank on blank and is submitted herewith for cancelation".

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Now these averments, these allegations that I read to you are not, up to this one here about "the last passport", questioned. It is conceded by stipulation between Mr. Cahill and myself that Mr. Browder was born in Wichita, Kansas, on May 20, 1891, and that he is and always has been an American citizen, and that his father was an American before him. This is not a case of any foreigner, an alien coming in here. This is a man of American descent coming from the State of Kansas, which is perhaps the central state of the Union. Now, the head and front of his offense, the whole thing that is charged against Browder

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here is writing in this word "None" in this blank. "My last passport was obtained from blank on blank and is submitted herewith for cancelation." We claim that the purpose of that statement in this application was to call for the production of the document, the passport itself, for cancelation. There is no question there as to calling on him to state whether there had been a previous passport or when it was issued, if there were any. And that is what he is charged with. That is the false statement. There is no charge that he made any oral false statement, no charge that he said anything false. The charge is a writing of the word in in that sentence there, and it is for you, ladies and gentlemen, to determine whether the writing of that word "None" in that one passage is a criminal offense or an act that caused him to be guilty of a criminal offense for which he could be sent to prison.

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You will notice that the first part there, the first allegations, which are not questioned, relate to his citizenship. This question here is an administrative regulation—the question about the last passport. And the object of it is evident. It called upon the person making the application to submit for cancelation the previous passport document if he had it. If he did not have it, if he hadn't kept it, if it had been lost, if for any reason it had been destroyed he couldn't, of course, produce it, and that is all that that sentence calls for, for the production of that passport document for cancelation, as we submit, a mere administrative regulation. You will see that Mr. Browder went on and stated there his description—brown hair and blue eyes, no distinguishing marks or features. He wrote the word "none" after "Distinguishing marks or features".

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"Place of birth: Wichita, Kansas.

"Date of birth: May 20, 1891.

"Occupation: Journalist.

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Opening For the Defense.

"I intend to leave the United States from the port of New York sailing on board the Il de France on Sept. 8, 1934."

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And there is the affidavit of his brother and there is his own photograph. There is no attempt whatever in any way to disguise his identity, no attempt whatever to travel incognito under the name of any other person, and we shall show you also that in 1938, in September, 1938, four years after this application, we will show you first that he made this application in 1934 under his own name, that he made the renewal. He renewed that application in February, 1937. This first passport that had issued on September 1, 1934 died and became void in September, 1936, and on the 2nd of February, 1937, as I recall it, Mr. Browder made an application to renew that passport. He made that application in his own name and we have that here and that will be put in evidence before you, the application showing that he made the application in his own name, showing that he made the original application for a passport in his own name, and he made the application for the renewal in his own name. And we shall show you that in September, 1938, he went down to Washington and applied there again under his own name, giving the same facts that he gives here, and another passport was issued to him in 1938 under his own name. We will show you that in 1934 he made an application under his own name for a passport which was issued to him. In 1937 he made an application for the renewal of that passport in his own name, and on that application the passport was renewed. We will show you that in September, 1938, he made still another application for another passport under his own name, giving the same facts and the same photograph and in no way attempting to disguise his identity. So from 1934 there is no claim here of any kind that from that time, 1934, six years ago, he has used

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any name except his own. During that time he has made an application for passport, an application for renewal, and an application for another passport. And in every instance that application was made in his own name telling the truth about himself, telling the fact of his being a native born American citizen, which he is, his father having been born before him in this country, and the truthful facts as to his age, as to his description, his photograph, everything perfectly open and above board for the last six years.

Now what do they say is the false statement on which this charge is based? "My last passport was obtained from 'none' on blank and is submitted herewith for cancellation". And you will see that that sentence ends there, and that is the statement that they say is false. 152

As I understood from Mr. Cahill's opening they will claim that that was a statement that he had no last passport or that he had no passport. The indictment charges, and Mr. Cahill repeated it, that the last previous passport before he signed this statement was a passport issued to him in 1931 under the name, or incognito name of Albert Henry Richards. We do not deny that in 1931 a passport was issued to him under the name of Albert Henry Richards. We don't deny that he used that passport. It is in evidence here that he is an official of the Communist Party, and it is in evidence here that he went abroad from time to time. Now it is perfectly obvious, and I don't think we need any proof to show, that a member or an officer of the Communist Party in going abroad and going through those troubled countries in Eastern Europe might very well meet difficulties if he was traveling under his own name. A man known to be the secretary of the Communist Party might have all sorts of difficulties put in his way, and that affords a very sensible reason for a man not wanting to travel under his own name. 153

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Mr. Cahill: I think, your Honor, that this is very much an argument. In the opening I think counsel should confine himself to what he intends to show, not a justification. I submit that that is argumentative.

The Court: I suppose that is so.

Mr. Battle: I am just calling attention to what we expect to call their attention to when the time comes for us to go into the trial of this case.

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And I do call your attention to the fact that it is a charge in the indictment, and we don't deny it, that a passport was issued to Mr. Browder in 1931, nine years ago, under the name of Albert Henry Richards, and that he traveled under that name.

The prosecution claims that that is the last passport before this application of August, 1934. The indictment charges that that was the last passport. Mr. Cahill, the United States Attorney, states that was the last passport and we state that that is the last passport. So that we are all in unison on that, that in 1931 that was the last passport. Now I submit that that is all that can be put in evidence here—

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Mr. Cahill: I object to that, your Honor. That is for the Court to rule upon, not for counsel.

The Court: I think that is true.

Mr. Battle: Yes. I will call your attention to the language of this section: "My last passport was obtained from blank on blank and is submitted herewith for cancellation", and I call your attention to the fact that no other passport except "my last passport" is mentioned therein. That is the charge that is made against him here and the only charge. There is no charge here that he impersonated anybody; no charge here that he defrauded anybody. The only charge is that in this application he wrote this word "None" when this questionnaire was handed to him. We shall show you, as I have said, that he is an American citizen, a man of family, wife and

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children. We shall show you that he was born in Kansas. His father was born in this country. He comes from American stock. He is no foreigner coming in here from abroad. When the evidence for the government is all in, then I am going to call your attention again to what the facts are in this case, and I will call your attention again to the facts that I have called your attention to here, and it will be proved beyond any question, because it is by stipulation, the fact is that the only charge against him is writing in this word "None" in this sentence: "My last passport was obtained from blank on blank and is submitted herewith for cancelation." That is an essential part of that sentence although it is omitted, for some reason, in the indictment; and Mr. Cahill did not mention it in his opening. And we claim on that flimsy, uncertain, vague, and meaningless concatenation of words "My last passport was obtained from 'none'" that there can't possibly be any charge made under these circumstances, and on the proof I have outlined, on the proof that shows that for the last six years this man has been getting passports under his own name and traveling under his own name and giving a full description of himself, going down to Washington and discussing matters with the officials, we claim under that proof that we are entitled to a verdict of not guilty at your hands.

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The Court: I think we might take a recess for a few minutes.

I expect to adjourn this afternoon at four o'clock; I have another hearing. Have you one witness that you could put on?

Mr. Cahill: Yes.

(Short recess.)

Q

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Charles Siegel—For Government—Direct.

CHARLES SIEGEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Siegel, what is your occupation? A. I am chief of the Passport Section of the Division of Communications and Records, State Department.

Q. How long have you held that position? A. Twelve years or more.

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Q. What were your duties? A. Well, I have under my supervision all the passport records as well as correspondence concerning citizenship of American citizens dating from 1906 to the present date. We record all this correspondence and these various forms of applications and conduct research in connection therewith.

Q. In connection with your duties have you supervision over the files containing applications for passports and correspondence and other documents in connection with applications for passports and their issuance? A. That is true.

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(Papers marked Government's Exhibits 1, 1-A, 2, 3 and 3-A for identification.)

Q. Mr. Siegel, will you explain to his Honor and the members of the jury just how passport applications are classified? A. Prior to April 1st, 1925, the passport applications were filed for reference purposes according to the serial number under which the passport was issued, and solely under that number with the cross reference card under the name. Subsequent to that period the passport applications and every form of correspondence arising in any specific case was filed together under the name preceded by the 130, which is a decimal filing system number.

Q. And approximately how many passport applications

Charles Siegel—For Government—Direct.

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are there in the files of the Department of State? A. Approximately nine million.

Q. Now, in seeking a given passport application or in checking an application are these nine million applications graded by anything other than name and prior to 1925 by number? A. There is a cross reference card merely giving the birthplace and birth date, but there is no descriptive information given.

Q. Is there any cross reference card with respect to the handwriting on a given application? A. There is not.

Q. Is there any cross reference card with respect to any particular applicant, as to whether he has a mustache or has not a mustache? A. No, there is not.

Q. So that in getting an application for a new passport, the only thing you have to go on is the name? A. That is correct.

Q. And any other information which may be contained on the application which is presented? A. That is right.

Q. I show you Government's Exhibits 1, 2, 3 and 4 for identification, and ask you if they are applications and accompanying papers made to the Department of State for a passport? A. Exhibit 1 is. So is Exhibit 2. Exhibit 3 is. I assume this is the application in question.

Q. Well, Exhibit 4 is the whole book, Mr. Siegel. Does that contain applications for passports for the time previously specified? A. That is true.

Q. And all these exhibits, are those kept under your supervision? A. Yes, sir.

Q. Will you also look at Government's Exhibit 1-A, Mr. Siegel, and tell me if that comes from the files? A. Yes, it does.

Mr. Werner: I offer in evidence Government's Exhibit 2 for identification. Is there any objection?

Mr. Battle: It is already in evidence. We have already stipulated it in evidence. We have no ob-

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jection to its being marked again. It is the same thing that the jury saw.

(Government's Exhibit 2 for identification received in evidence.)

Mr. Werner: Government's Exhibit 2 in evidence, ladies and gentlemen, is the passport application previously referred to by Mr. Battle in the name of Earl Russell Browder.

The Court: Is that the application of May, 1934?

Mr. Werner: September 1st, 1934, your Honor.

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Mr. Battle: The application was made August 31st.

(Government's Exhibit 4 for identification received in evidence.)

Mr. Werner: Just to keep the record straight, the book, Exhibit 4, is now being marked, and that is the book which Mr. Siegel has testified concerning.

The Court: What is the book?

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Q. What is the book, Mr. Siegel? A. The book is the passport applications prior to April 1, 1925. They are bound together for the sake of convenience. It is easier to store them that way because they are not quite as active for reference purposes as those subsequent to that time, and we found that it is practical to bind them up in volumes consisting of approximately 200 to approximately 225 applications to the volume. It is only done for the sake of saving active space.

(Papers marked Government's Exhibits 6 and 7 for identification.)

Q. I show you Government's Exhibits 6 and 7 for identification and ask you if they are from the files of the passport division? A. They are both from the files of the passport division.

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Q. And is Government's Exhibit 6 for identification a renewal application on a passport? A. That is correct.

Mr. Werner: I offer it in evidence.

Mr. Battle: Is that the application for the renewal of the passport, September 1, 1934?

Mr. Werner: Yes.

Mr. Battle: There is no objection. That has already been stipulated to.

(Government's Exhibit 6 for identification received in evidence.)

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Q. And is Government's Exhibit 7 for identification a letter which was received by the passport division in connection with the application of Earl Browder for a renewal of the passport in his own name? A. That is correct.

Mr. Battle: No objection.

Mr. Werner: I offer Government's Exhibit 7 for identification in evidence.

(Government's Exhibit 7 for identification received in evidence.)

Q. I show you Government's Exhibit 5 for identification, Mr. Siegel, and ask you if that is a passport of the United States? A. Yes, it is.

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Q. And is Government's Exhibit 5 for identification the passport that was issued upon the application of Earl Russell Browder, which was executed August 31, 1934, Exhibit No. 2 in evidence, and renewed by Exhibit No. 6 in evidence? A. That is correct.

Mr. Werner: I offer Government's Exhibit 5 for identification in evidence.

Mr. Battle: Is that the passport?

Mr. Werner: Yes, sir.

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Mr. Battle: No objection.

(Government's Exhibit 5 for identification received in evidence.)

Mr. Battle: Have you any objection to showing that passport to the jury?

Mr. Werner: None whatsoever, I just want to ask one more question.

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Q. Mr. Siegel, prior to the time that the passport, Government's Exhibit 5 in the name of Earl Russell Browder was issued upon the application Government's Exhibit 2 in the name of Earl Russell Browder, had there ever been a previous application made to the Department of State for a passport in the name of Earl Russell Browder or had there ever been any request of any sort made to the Department of State for a passport in the name of Earl Russell Browder?

Mr. Battle: I object to that, if your Honor please.

The Court: Overruled.

Mr. Battle: Incompetent, immaterial and the witness can't possibly answer it of his own knowledge.

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The Court: The question I understood is addressed entirely to the records of his department.

Mr. Werner: That is right.

Mr. Battle: I except.

A. I can state from personal examination of the records that there is no such record.

Q. There never was a previous application, never one previous to Government's Exhibit 2? A. That is correct.

Mr. Battle: I object to the form of the question.

The Court: I will sustain the objection. No record of any previous application in his own name I understand is the testimony; is that right?

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The Witness: That is right.

Mr. Battle: And I object to that as incompetent and immaterial.

The Court: Overruled.

Mr. Battle: Take an exception.

Q. And have you made a personal search of all the records of the Department? A. I have made such search.

Mr. Werner: This is an application. This is the passport. This is the renewal application.

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If I may, Mr. Battle, I would like to call the jury's attention to the fact that the immigration stamps appearing opposite the photographs bear the dates August 31, 1934, and February 2, 1937.

Mr. Battle: And there are other dates, April 30th, and February 15th.

Mr. Werner: There are a number of dates, but I wish to call attention to the two specified in the indictment.

Mr. Battle: We have no objection to that.

Mr. Werner: You may cross-examine.

Cross Examination by Mr. Battle:

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Q. Mr. Siegel, have you got the application for passports in September, 1938? A. Yes, sir, they are under my supervision.

Q. Have you got them here with you? A. No, sir.

Q. Did you look among your records for September 26, 1938, to see if there was an application for passport there by Earl Browder?

Mr. Cahill: Objected to as immaterial. The testimony on direct here is limited as to an application in Browder's own name prior to the passport of

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September 1, 1934, and that is the charge we are trying. What may have happened subsequent to that time is immaterial.

Mr. Battle: I want to show that in 1938 this man made an application in his own name.

The Court: That is after February 15th, 1938?

Mr. Battle: Yes, sir.

The Court: I sustain the objection.

Mr. Battle: Exception...

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Q. Did you look for any such document?

Mr. Cahill: I repeat my objection.

The Court: Objection sustained.

Q. What did you say your position was? A. Chief of the Passport Section of the Division of Communications and Records.

Q. Here in New York? A. No, sir, State Department in Washington, D. C.

Q. State Department? A. Yes, sir.

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Mr. Battle: That is all.

The Court: I think we had better adjourn at this point until tomorrow morning at half past ten.

(Adjourned until Thursday, January 18, 1940, at 10:30 A. M.)

New York, January 18, 1940, 10:30 A. M.

(Trial resumed.)

Mr. Werner: Mr. Hughes, please.

Mr. Battle: If your Honor please, I would like to recall the witness Siegel just for two or three

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questions on cross examination. I understand he is still here.

Mr. Werner: He is still outside.

CHARLES SIEGEL, recalled.

Cross Examination (Continued) by Mr. Battle:

Q. Mr. Siegel, as I understood your testimony yesterday, you said that prior to April, 1925, that the different passport applications were classified according to number, is that correct? A. Prior to April 1st, 1925, all passport applications were bound up for convenience sake into volumes and they were filed according to number rather than according to name, with a cross reference card made in order to be able to identify applications by number.

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Q. How were they classified according to number? A. Well, necessarily in the course of the day a great many applications of different names would be issued, and the numbers would run consecutively but the names would not. So that they had to be filed according to the number under the system existing at the time those applications were bound.

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Q. In other words, the applications were put together consecutively? A. Yes, sir.

Q. As the different numbers ran on? A. That is correct.

Q. Then they were bound up in that order? A. That is correct.

Q. Then you say there was a cross system of cross notation? A. There is an indexing system.

Q. Describe that to us. A. The index system is a system of card indexes on which the name of the individual was given and the passport number and the date only. That is

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Charles Siegel—For Government—Recalled, cross.

an old system. The more modern system is just a little bit more comprehensive.

Q. Was the name and the number brought together by that cross index system? A. In order to ascertain whether a passport application existed on a certain individual it was necessary to search the index first.

Q. If you got the name, that would indicate the number also, and there would be a notation of the number? A. Yes.

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Q. So that if you got the name you could locate the passport? A. Yes.

Q. That existed up to April, 1925? A. April 1st, 1925.

Q. After April 1st, 1925, what was the change? A. There was a little more comprehensive information given on the index record and that was to give the individual's complete name, the birthplace, the birth date, and his residence in the United States or abroad as the case may be, and the date on which the application was recorded, made of record in the department.

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Q. Was there a change in the regulation in the Department about that time, requiring this additional information about where the applicant resided and so on? A. I am speaking now only of what I learned subsequently from the time this was established, and it was merely for the sake of convenience necessarily as the index and file grew from two million names to nine million at the present time. It was necessary in order to speed up the handling of these applications. Just a little more information was necessary on those cards to identify a person quickly in order to obtain their file.

Q. What was the change in the system of filing and cross indexing after April 1st, 1925? A. The change was to give just a little more information on the record card.

Q. Were the applications still filed according to number? A. Subsequent to that period?

Charles Siegel—For Government—Recalled, cross.

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Q. Yes. A. No, sir; they were filed according to the name.

Q. And was there a cross index giving the number? A. No, sir.

Q. So that after 1925, if you looked for a certain name of an applicant for a passport and found that name, you could locate the application? A. I didn't understand your question.

Q. I say, after 1925, if you were looking for an application made under a certain name, the name of a certain applicant, you could find that in the index? You could find the name? A. Yes, sir.

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Q. And from that you could locate where the application was? A. That is correct.

Q. But there was no index by which you could look at a number after 1925? A. Not within my jurisdiction. There is such a system.

Q. Where is that? A. That is located in the passport division and those records are not resorted to except in cases where we can't readily identify a case according to the name.

Q. But there is a record kept according to the number in the passport division? A. Yes, sir.

Q. And in your division you would keep a record according to the name? A. Well, we actually maintain the records of that also, but they are not resorted to except in unidentifiable cases from the name alone. In other words, we know a certain passport number, but we don't know the name of the original holder of that passport.

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Q. If you knew the number of the passport but didn't know the name of an applicant, could you locate the passport and the application under your present system? A. Yes, sir, we could resort to the old records that we have.

Q. But in the case of a record since 1925? A. Well, that is maintained up until within a period of one or two years. That is what we call current dates. That is main-

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Charles Siegel—For Government—Recalled, cross.

tained in my office. But within that period it is carried in the passport division.

Q. So that in the passport division there is a system of filing and cross indexing according to number still?

A. That is in connection with the actual passports issued. They don't have a cross index. I think it is just merely a list of names and the passport number.

Q. What is your arrangement as to how or as to what is done with the applications themselves, the papers that constitute the applications, where are they kept? A. They are within my jurisdiction.

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Q. Are they kept in an envelope or filed? A. No, sir, they are maintained in what you call an open file and filed according to the dictionary arrangement or alphabetical arrangement.

Q. Are they bound up? A. Not since April 1st, 1925.

Q. They are simply kept loose? A. That is right.

Q. How many of them are there? A. There are approximately nine million.

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Q. How do you keep them separate? How do you keep them in order in any way unless they are put in a file or unless they are bound? A. Well, those in the file are maintained—they are filed in the regular filing cabinet and the name appears at the top of the paper—the top edge of the paper where the name is indexed on the side of the application and we examine the records that way in order to obtain a certain case.

Q. If it develops that an applicant has had passports issued to him for one reason or another under more than one name, would those passports issued to one man under different names be kept together in a file? A. If we knew that it was the same person we probably would transfer it to the individual's correct name, that is, where there is a slight variation. It occurs where a man may not sign his name with the same initial twice, or he may use his front initial once.

Q. Assuming that a man had his name changed by order of a court and had one application under his own name and a second application under his new name, would they be kept together in the one file? A. The new application, if it contained a court order, would justify us in removing the old application and transferring it to the new name and filing them together.

Q. So that in that case it would be filed together? A. That is right.

Q. Suppose there was no court order but for one reason or another the man wanted to use another name and the Department knew it, would they then be filed under one name? Would the applications be filed under one name? A. No, sir, not necessarily. It depends on the attitude the Department assumes in that particular case.

Q. Sometimes it would be and sometimes it would not be? A. My office would not be the one to decide. It would be up to the passport division.

Q. Who is the head of the passport division? A. Mrs. Shipley.

Q. Mrs. Ruth Shipley? A. Yes.

Q. She is the one who determines in the case where a passport is issued to one man under more than one name, whether they should be put together in one file? A. That would be anyone who was doing that particular line of work; not Mrs. Shipley personally.

Q. But it would be under her jurisdiction and control? A. Yes, sir.

Q. These applications that you produced here yesterday under the name of Dozenberg and Morris and Richards, where did you get them from? A. They were obtained from my regular file with the exception of the one in the bound volume which is not within my—within what we call our live file.

Q. That was in your regular file? A. Yes, sir.

Q. Was that under the control of Mrs. Shipley? A. No.

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Q. Simply under your own control? A. Well, our activities are coordinated, but they have no direct connection.

Q. These particular applications that you produced yesterday, though, they were in your regular files? A. That is correct.

Q. And they are accessible to everybody, aren't they? A. I don't know what you mean by everybody.

Q. Anyone who wants to see them can come in and make an application to look at them and look at them? A. Not within my jurisdiction. That has to be done through the passport division. I have no authority to show them to anyone, but officials of the department.

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Q. Who has the right to give permission for anyone to come and look at them? A. Mrs. Shipley.

Q. If anyone wanted to look at those applications, they would go down and make an application to Mrs. Shipley's division? A. That is correct.

Q. And then they would come down and look at them? A. Either that or she would send for the paper.

Q. That is being done very frequently? A. Yes, sir.

Q. In fact, it is being done all the time? A. Yes, sir.

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Mr. Battle: Your Honor, I want to renew my objection as to whether there is not an application on file for a passport issued in 1928—

Mr. Cahill: Not 1928; 1938.

Mr. Battle: In September, 1938. And I do that for the reason that it is now apparent that they are going to offer in evidence these applications under these three names. Under those circumstances I think I have a right to object to its introduction. The application applied for in 1934, a passport under his own name was issued. The passport was issued under his own name. And it is in evidence that two years later he applied to renew in 1937 in his own name, and that the renewal was issued

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in his own name. And then in 1938 he again applied in his own name and a passport was issued.

Mr. Cahill: I press the question.

The Court: I adhere to my ruling.

Mr. Battle: I except. That is all.

Re-direct Examination by Mr. Werner:

Q. Just one or two questions. Mr. Battle asked you with respect to the files prior to 1925, whether if you have the name you could find a passport and you said yes. Do you mean that you could find the passport or the passport application? A. Probably in my haste I said that I understood him to say passport application, but it is passport application, of course. 200

Q. And you can only find the passport if the individual has turned it in, is that correct? A. That is correct.

Q. You also referred to the filing system since 1925 and you referred to the name index. I show you Government's Exhibit 2 in evidence and call your attention to the right hand side of the front page where "130, Browder, Earl Russell" is written, and I ask you if that is what you meant by the name index? A. Yes, sir, that is correct. 201

Q. And the applications are placed on the end and by thumbing through them you have an alphabetical index of the names? A. That is correct.

Q. With respect to a change of names, Mr. Siegel, when the passport division learns that a change in name has been made, is that cross-indexed? A. That is right.

Q. Is there any cross-index card for a change in name or an application to change the name of Earl Russell Browder? A. I would have to see that application.

Q. (Handing paper.) You are now looking at Government's Exhibit 2 in evidence.

Mr. Battle: Which one is that, Mr. Werner?

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Mr. Werner: That is the original Browder passport application.

A. There is nothing on here that would indicate that any such change was requested or made.

Mr. Werner: Thank you.

The Court: That is all, Mr. Siegel.

Mr. Battle: Just one question.

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Re-cross. Examination by Mr. Battle:

Q. Referring to this original application, the so-called Browder application, August, 1934, I see a number at the top here, 130. What is that number? A. That is the decimal filing system number. The State Department necessarily handles all subjects, not only matters pertaining to citizenship, but matters relating to international relationships, and we have a very fine decimal system to take care of any situation that arises so that subsequently when the search is to be conducted it can be readily found. This refers to citizenship in the United States, or it has been accepted for a passport. And all passport applications, all forms of applications concerning citizenship and passports of American citizens are filed since April 1st, 1925, under this system.

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Q. And that 130 indicates that that application was made by an American citizen and the passport granted to an American citizen? A. Not necessarily so. In some cases the passport is not issued, but the application remains as a permanent part of the file.

Q. What does that number mean so far as this application is concerned? A. That is an application for passport of an individual who claims to be an American citizen.

Q. An application made by someone who claims to be an American citizen? A. That is correct.

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Q. And that is made as an application of an American citizen? The application is made by an American citizen?

A. That is the assumption. Of course, after the evidence is considered it may be the passport may be refused and of course that has no bearing on the number.

Q. After the evidence is considered and if the Department determines that the applicant is an American citizen, then the passport is issued to him? A. Yes, sir. .

Q. So that the issuance of a passport is evidence that the Department has determined that he is an American citizen? A. Well, I can't of course answer technically on that, because that is not within my province.

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Q. But it is the fact that the passport is issued only to persons owing allegiance to the United States?

The Court: Claiming to owe.

A. Yes, sir, that is right.

Q. I notice on this application this notation—

Mr. Werner: Mr. Battle, I don't like to interrupt you, but would you identify that for the record as Government's Exhibit 2.

Mr. Battle: This is Government's Exhibit 2, the original Browder application, which is dated August 31, 1934.

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Q. I notice on here this notation: "Department of State, Washington, Amended November 26, 1937, to read, 'The bearer is a newspaper correspondent assigned to Spain and his passport is valid for travel in that country,' by authority of the Secretary of State, R. Shipley." That is the Mrs. Shipley to whom you referred?

Mr. Cahill: The Government intends to go into all these notations with every witness who comes

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from the particular division that is concerned with the particular notation. It is better to query them than to ask this man, who has nothing to do with that. If there is anything left untouched that Mr. Battle wants to inquire about, we intend to call these men back. But we intend to go into all of these things.

Mr. Battle: This is a notation on the exhibit offered by the Government.

Mr. Cahill: I understand.

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The Court: He doesn't know any more about it than appears on the record itself.

Mr. Battle: I am going to ask him that.

The Court: Mr. Cahill says that someone who knows more about it than he does will be called upon. You may reserve that question.

Q. Do you know the handwriting that appears in that amendment dated November 26, 1937? A. Offhand I can't say. I wouldn't really be in a position to know.

Q. Have you any opinion? Can you state whose it is, in your opinion? A. No, sir.

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Mr. Battle: That is all.

JAMES JOSEPH HUGHES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Hughes, what is your occupation? A. United States Assistant Passport Agent at New York.

Q. And how long have you been passport agent? A. Assistant agent since 1924. Agent since 1919.

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Q. And what are your duties briefly? A. At the present time supervising the Rockefeller Center passport agency.

Q. How long have you been supervising the Rockefeller Center passport agency? A. Since 1936.

Q. Prior to that what were your duties? A. Assistant passport agent at the Sub-Treasury Building, at the downtown section.

Q. In the course of your duties, Mr. Hughes, are applications for passports executed before you? A. They are.

Q. And have you authority to administer an oath? A. I have.

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Q. Both with respect to the applicant and the identifying witness on the passport application? A. I have.

Q. I show you Government's Exhibit 2 in evidence, a passport application in the name of Earl Russell Browder, and ask you if that application was executed by you. A. It was.

Mr. Battle: If your Honor please, we have conceded the execution of that application. It has been stipulated in evidence. I object to the question to the witness on the ground the application is in evidence and that it itself is the best evidence.

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The Court: No, I will let him testify.

Mr. Battle: I except.

Q. Mr. Hughes, approximately how many passport applications have been executed before you since you became an agent of the Department of State? A. That would be pretty hard to estimate. I would say a great many thousands.

Q. And have you any recollection of Government's Exhibit 2 being executed before you? A. Only the fact that my signature appears in two places.

Q. That is, after the signature of the applicant and after the signature of the identifying witness? A. That is right.

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Q. Now, Mr. Hughes, is it necessary for both the applicant and the identifying witness to appear in person at the passport agency? A. It is.

Q. And is it also necessary for the applicant to present proof of citizenship? A. It is.

Q. Can you tell from looking at Government's Exhibit 2 in evidence what proof of citizenship was presented by Mr. Browder, the applicant in that case? A. I can.

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Q. Will you state? A. In this case the brother of the applicant appeared and attested to the applicant's citizenship.

Q. And did you affix a stamp to Government's Exhibit 2, indicating that fact? A. I did.

Q. What is the brother's name, Mr. Hughes? A. William E. Browder.

Q. Now, what is your procedure, Mr. Hughes, when an applicant for a passport appears before you? A. The first thing is to check—

Mr. Battle: What was your procedure at that time?

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Q. Well, what was your procedure at the time Government's Exhibit 2 in evidence was executed before you, and what is still your procedure with respect to when an applicant for passport appears before you? A. The procedure always has been and still is to check the application thoroughly for any omissions and then to ask the applicant if they have ever had a passport.

Mr. Battle: I object to that, if your Honor please. I object to any general procedure.

Q. Is that procedure always followed, Mr. Hughes? A. I have never—

Mr. Battle: Wait a minute. I object.

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The Court: Objection overruled.

Mr. Battle: I object to it as incompetent, immaterial, it is not in any way binding on the defendant.

Q. Is that procedure always followed by you, Mr. Hughes? A. Always.

Mr. Battle: I except to your Honor's ruling.

Q. Can you tell by looking at Government's Exhibit 2 in evidence what answer the applicant gave you when you asked that question? .

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Mr. Battle: I object, if your Honor please. A hypothetical question like that? The charge here is that this defendant made a false statement by writing in that word "None." There isn't any charge that he made any oral false statement.

The Court: I understood. There is some question that you have raised with respect to the meaning of the word "None."

Mr. Battle: Yes, sir.

The Court: I think the jury is entitled to know the circumstances under which that application was signed.

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Mr. Battle: But Mr. Hughes says that he has no recollection whatever of what happened on the day that Mr. Browder came in there.

The Court: He has no present recollection except as he sees it on the application itself and he says that a certain practice was invariably followed in connection with such application.

Mr. Battle: The question is what the procedure was. The question is not what happened on that particular occasion.

Mr. Werner: Will you read the last question.

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(Question read.)

Mr. Battle: If your Honor please, I object to that on the ground first that it is generally incompetent and immaterial and particularly under the circumstances of this case where the charge against the defendant is a written statement. The allegation of falsity is predicated on a written statement, and it would be immaterial as far as this charge is concerned what the defendant might or might not have said. And I object upon the further ground that this witness has testified that he has no recollection whatever about this particular instance.

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Mr. Werner: Your Honor, Mr. Battle is—

The Court: Objection overruled.

Mr. Battle: I except, your Honor.

Q. (Question reread.) A. I can.

Q. What answer did he give?

Mr. Battle: I renew my objection on each ground.

The Court: I understood that you have an objection and exception to all this line of testimony.

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Q. What answer did he give, Mr. Hughes? A. "None."

The Court: What is the answer?

The Witness: "None."

The Court: N-o-n-e?

The Witness: N-o-n-e.

Q. And following your invariable procedure, Mr. Hughes, what did you do next?

Mr. Battle: I object, if your Honor please, to that question.

The Court: I understood that you have an objection and exception.

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Mr. Battle: I except.

A. The next procedure was to swear him to his signature.

Q. And what do you say to the applicant when you swear him to his signature?

Mr. Battle: All this line of testimony is taken under my exception?

The Court: It is quite understood.

A. I ask him, "Do you swear that this is your signature?"

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Q. Yes. A. The answer is, "I do."

Q. Anything else said by you? A. Then "Do you swear that the entire contents in this application are true and correct?"

Q. And can you tell by looking at Government's Exhibit 2 in evidence what the applicant answered? A. "I do."

Q. Mr. Hughes, what is the next step in your procedure? A. The next and final step is to administer the oath of allegiance.

Q. And what do you say to the applicant? A. "You also swear your allegiance to the United States?"

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Q. And can you tell by looking at Government's Exhibit 2 what the applicant answered? A. I can. It is "I do."

Q. What is the next step? A. That is the final step.

Q. What do you do with the application after the applicant has been sworn to it and the identifying witness has been sworn? A. I sign it in two places and put the seal of the United States on it.

Q. Then what do you do with it, sir? A. Then the application is put aside for filing and forwarding to Washington for the issuance of a passport.

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Q. I call your attention on the front of Government's Exhibit 2 to the words, "France, England, Germany, Pleasure," and ask you if you know in whose handwriting that is? A. I do.

Q. In whose handwriting is that? A. That was written in by the information clerk from the Wall Street agency.

Q. Who is he? A. Mary J. Hayes.

Q. What are her duties? A. The information clerk?

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Q. What are the duties of the information clerk? A. To issue instructions to the person who comes before her, as to how to fill the application out, and witness the signature of both the applicant and the witness.

Q. After she has checked it, it comes to you to administer the oath and ask questions? A. To one of the agents of the Department of State.

Q. Can you tell by looking at Exhibit 2 where the applicant requested the passport to be sent? A. The passport was requested to be returned to the New York agency.

Q. Is it a fact, Mr. Hughes, that if the applicant requested it in some cases, the passport is sent to the agency to await his call for it? A. It is.

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Q. Now I call your attention on the reverse side of Government's Exhibit 2, to the initials "M. J. H.," under the signature "Earl Russell Browder," and to the right of the signature "William Browder," and ask you if you know who wrote that? A. I do.

Q. Who? A. Mary J. Hayes.

Q. And I call your attention to the word "Brother," on the left of the words "William Browder," and ask you if you know who wrote that? A. I do.

Q. Who? A. Mary J. Hayes.

Mr. Werner: That is all.

Mr. Battle: If your Honor please, I renew my objection to each and every question that has been

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asked on the same grounds stated when I made the specific objection.

The Court: Objection overruled. I don't know whether it is necessary to repeat these objections in view of the fact that I have said I have given you not only an objection but an exception. I think that is adequate to cover it.

Mr. Battle: Your Honor's statement that the objection applies to the whole line of testimony and that you give me an exception I think is sufficient.

Cross Examination by Mr. Battle:

Q. Mr. Hughes, back in August, 1934, you were down there at the Sub-Treasury, were you? A. I was.

Q. Were you there in the main room that applicants for passports go into? A. I was.

Q. As I recall that, from my visit there, getting a passport myself, there is a desk, isn't there, on the left hand side? A. There is.

Q. A sort of railing? A. That is right.

Q. And there is a window in the partition there? A. Well, there isn't any partition. You mean at the agent's desk?

Q. Yes. A. No, there is just lights there ahead of him; there is no partition.

Q. Isn't there a partition there with a sort of window behind which the agent sits? A. No, there isn't.

Q. Where did you sit in that room? A. I sat at the first desk on the left of the office as you come in the Wall Street entrance.

Q. As you come in the Wall Street entrance? A. At the left.

Q. At the left? A. That was the first desk on the agent's side.

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James Joseph Hughes—For Government—Cross.

Q. Was there a partition between your desk and the outside passageway? A. Not the outside passageway. That is where the information clerk sits.

Q. Is there a passage between your desk— A. There is.

Q. And the outside passageway? A. There is.

Q. And when anyone comes in to execute an application, does he see you as he comes in or is that partition between you and the person that comes in the room? A. Ordinarily they wouldn't notice our desk. They go right to the information clerk.

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Q. They go right to the information clerk. About how many passports do you say you have taken since you have been working there? A. It would be hard to estimate it.

Q. Many thousands, you said? A. A great many thousands.

Q. You say you can't recall the circumstances of any particular case? A. No particular case.

Q. From whom did the applicant get the blank form? A. Usually from the information clerk.

Q. The applicant comes in and gets the application form from the information clerk? A. Yes.

Q. Then the application is filled out? A. Yes.

234

Q. Then does the information clerk and the applicant come to your desk? A. The information clerk doesn't come; the applicant does.

Q. The applicant comes there alone? A. Yes.

Q. So when this application was brought to you it was all filled out just as it is now with the exception of your signature? A. That is right.

Q. You didn't make any notation on it yourself? A. I did not.

Q. I notice on the right hand top of this application—

Mr. Battle: Government's Exhibit 2, is it?

Mr. Cahill: That is right.

Q. (Continuing) Passport number blank, issued at Washington on blank, "seen and had been cancelled." Was that supposed to be filled out when the applicant came in or after the application had been sent down to Washington?

A. Which place is that, please?

Q. Right up here, sir (indicating)? A. That is on every application. If the passport had been issued or had been presented, the record would have been made in that state.

Q. That would have been made down at the office here?

A. It would have been made at my desk.

Q. This signature "Dismon, 9/1" on the face of the application. A. Where is that? Here? 236

Q. Yes, right there. A. That was put on probably in Washington.

Q. That "9/1" means September 1? A. I believe so. That is a Washington notation.

Mr. Battle: I will show it to the jury.

Mr. Cahill: We are going to call men from Washington in the Department of State who know about these things. This man is from New York.

Mr. Battle: I just asked him whether that was there.

Q. Was that there when you saw the application? A. It was not there when I saw the application.

Q. Of course this amendment here with the name of "R. B. Shipley" below. That wasn't there, of course? A. No, that wasn't.

Q. What were your hours there? A. From nine until four-thirty.

Q. Now, after the application was made out, was it sent down immediately to Washington? A. The same day.

Q. Then the passport, if the applicant requested it, would be returned and sent to the agency? A. Right.

Q. Or it could be sent to his home? A. Yes.

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James Joseph Hughes—For Government—Re-direct.

Q. And in this instance there is a request that it go to the agency, is there not? Is this the request, "New York Pouch"? A. That is right.

Mr. Battle: "I request that my passport be mailed to the following address: New York Pouch" type-written across there.

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Q. And that on this particular application indicates that the applicant requested and desired that the passport be mailed back to your office? A. Right.

Q. And that was done? A. Right.

Q. Mr. Hughes, you have no recollection of this particular passport? A. I have not.

Q. So when you say it was sent back, you mean that was the usual procedure? A. That is the procedure.

Q. Does the applicant usually sign the application before the information clerk? A. That is the usual procedure.

Q. So when the application is brought to you it has already been signed up? A. That is right.

Q. And usually your part of the transaction takes very little time, doesn't it? A. Very little.

240

Q. About how long, would you say? A. In this case probably not more than two minutes; two and a half minutes.

Q. You are still in the Government employ? A. I am, sir.

Q. Up at the Rockefeller Center passport division? A. Yes.

Mr. Battle: That is all.

Re-direct Examination by Mr. Werner:

Q. Mr. Hughes, on Government's Exhibit 2 Mr. Battle read you the passport number blank, issued at Washington blank, "seen and had been cancelled." Is that printed on

James Joseph Hughes—For Government—Re-direct.

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the form there? A. That is on the form printed by the United States Government Printing Office.

Q. That is not written in, that any passport was seen and cancelled? A. That is right. That is printed by the United States Government Printing Office.

Q. Is there anything filled in on that form? A. No, sir, there is not.

Q. Does that indicate that no passport was seen and cancelled? A. That is right.

Q. You also said that applicants appeared at your desk alone. Does the identifying witness accompany the applicant to your desk? A. Always. 242

Q. "New York Pouch." Will you explain that to his Honor and the jury? A. New York Pouch means that the passport is to be returned to the agency in preference to any other address. It is usually done to expedite the delivery of the passport.

Q. Does the word "Pouch" indicate that it is sent down in a special mail pouch of the State Department and does not go through the regular mail? A. It is a diplomatic government pouch.

Q. Mr. Hughes, you testified that the applicant does not sign his name in front of you. The applicant presents two pictures of himself, does he not? A. The pictures are attached to the application when it comes to the agent's desk. 243

Q. You compare those pictures of the applicant as he looks before you, do you not? A. I do.

Q. And you also ask the applicant to acknowledge his signature? A. I do.

Q. Mr. Battle also asked you whether you could recall the circumstances of each case. Now I ask you, can you state that in each case you follow the procedure which you have testified to here today, and that in other cases there may be things added onto that procedure, but there is never anything taken away from it?

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James Joseph Hughes—For Government—Re-cross.

Mr. Battle: Your Honor, I think that is leading.
The Court: He has already testified to that.

A. The procedure is always the same.

Re-cross Examination by Mr. Battle:

Q. Mr. Hughes, you are human, aren't you? A. I hope so.

Q. We, all of us, vary in our activities; we don't always do things exactly the same way, do we? A. Not always, I don't suppose.

245

Q. There is an old proverb that to err is human. A. Right.

Q. You don't claim you did this thing exactly the same way all the time? A. There was very little to do on it. It was mostly done when it came to my desk.

Q. You did very little. Your part was very little. A. Very little.

Mr. Battle: That is all.

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ELMA V. WALDRON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Waldron, what is your occupation? A. Agent of the Department of State.

Q. How long have you been an agent of the Department of State? A. About twenty years.

Q. And as agent of the Department of State are you authorized to have applications for passports executed

Elma V. Waldron—For Government—Direct.

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before you? And to administer oaths in connection therewith? A. Yes.

Q. I show you Government's Exhibit 6 in evidence and ask you if you have ever seen that before? A. Well, my signature appears on here.

Q. On the front page thereof? A. On the front page, yes.

Q. Can you explain to his Honor and the jury what Government's Exhibit 6 is? A. That is an application for renewal of a passport.

Q. In whose name? A. The name of Earl Russell Browder.

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Q. Now, is there any other writing on that application for renewal in your handwriting besides your signature? A. "N. Y.", meaning renewed at New York. My initials—I merely checked there that I received \$5.00 for the renewal on this page.

Q. On the reverse side is there any writing? A. On the reverse side there is the address of the applicant, what port he is leaving from, New York, by the boat on the French Line. He maintained—the date was February 2, 1937, and at the bottom where it says "Remarks," "Applicant maintains he will travel to France, Switzerland and U. S. S. R. for business for self; occupation Journalist." My signature and a stamp was put on there I believe by me, "This passport not valid for travel in Spain."

249

Q. By looking at that renewal application, Government's Exhibit 6, Mr. Waldron, can you state what conversation you had with the applicant at that time? A. Why, I believe I asked him—

Mr. Battle: I object, if your Honor please, I object to any statement as to the conversation on the ground that the question here is a matter of what was the written statement, and on the further ground—

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Elma V. Waldron—For Government—Direct.

The Court: The question calls for a yes or no answer.

Mr. Battle: I object to the question.

The Court: Overruled.

Mr. Battle: Exception.

The Witness: May I have the question?

251

Q. By looking at Government's Exhibit 6 before you, can you state what conversation you had with the applicant at the time he appeared with that renewal application?

Mr. Battle: I renew the objection on the ground that the conversation here is immaterial.

The Court: Overruled.

Mr. Werner: I think his Honor ruled that the witness may answer yes or no.

Q. Will you answer yes or no? A. Did I have a conversation with him?

Q. Yes. A. Yes.

Q. Can you state what the conversation was?

252

Mr. Battle: I object to it, if your Honor please on the ground the conversation is immaterial.

The Court: He can answer yes or no. If he can't answer yes or no he can so state.

Mr. Battle: I except.

A. Well, as a general rule we always ask—

Mr. Battle: I object to the statement, what the general rule is, and ask that that question—

Q. By looking at what you have written on that renewal application, Government's Exhibit 6 in evidence, can you state what this applicant told you?

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Mr. Battle: I object to that, if your Honor please.

The Court: Overruled.

Mr. Battle: May I just state my ground.

The Court: It is quite apparent what the ground of the objection is.

Mr. Battle: I wish to add one more, and that is this: it is evident from what the witness says that he has no recollection of—

The Court: He hasn't so stated yet.

Mr. Battle: He said that is what we generally do. That is my general rule. I would ask permission to cross examine him on that.

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Mr. Werner: Your Honor, Mr. Battle won't let me lay a foundation. Now he is objecting because I haven't laid a foundation.

The Court: All right, let us go ahead.

Q. Mr. Waldron, will you examine what you have written on the reverse side of that application, and state whether or not you can tell us whether or not that is what the applicant told you when he appeared with that application, Government's Exhibit 6? A. "7 Highland Place." Place of residence 7 Highland Place. 255

Q. Yes. A. "Yonkers, New York."

Q. Anything else? A. "What port are you leaving from? New York." That is his answer.

Q. Yes. A. "By what boat? French line. When? A. February 1937." February meaning the present year.

Q. Then did you ask him any other questions? A. What countries did he intend to travel to.

Q. Can you tell what he answered from Government's Exhibit 6? A. "France, Switzerland and U. S. S. R. for business for self," that is, meaning for himself. His occupation was journalist.

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Elma V. Waldron—For Government—Direct.

Q. Now, at the time he presented that renewal application, Mr. Waldron, did he present a passport? A. Yes, sir.

Q. I show you Government's Exhibit 5 in evidence and ask you if that is the passport which he presented for renewal? A. Yes, sir.

Q. And on what do you base that statement? A. On the fact that it appears on the application in my writing.

Q. That is Government's Exhibit 6, the renewal application? A. Yes, sir. The number of the passport and the
257 date it was issued and his name.

Q. Have you finished? A. Yes.

Q. And that checks with Government's Exhibit 5, the passport? A. Correct.

Q. Now, did you affix the stamp "Not valid for travel in Spain" to the passport, Government's Exhibit 5 and the renewal application, Government's Exhibit 6? A. Yes.

Q. Will you tell his Honor and the jury the circumstances of your affixing that stamp? A. At that particular time the passports were not valid for travel in Spain.

Q. And were there instructions of the Department that the agents were not to issue passports valid for travel in Spain without specific instructions to the contrary? A.
258 Yes, sir.

Q. And did you have any specific instructions to the contrary in this case? A. You mean to make it valid for Spain?

Q. Yes. A. No.

Q. Now, I call your attention to a stamp appearing on page 6 of Government's Exhibit 5 in evidence, the passport, reading "Department of State, Passport Agency, New York, No. 4014, renewed February 2, 1937, expires September 1, 1938, by authority of the Secretary of State, Ira F. Hoyt, Passport Department, by Elma Waldron," and ask you if that stamp and the writing on it was put

Elma V. Waldron—For Government—Cross.

there by you at the time the renewal application was made?

A. Yes.

Q. And is the same true for the writing at the bottom of page 7, "See stamp on page 8." A. Yes.

Q. Is the same true with respect to the stamp on page 8, reading "Department of State, Washington, American citizens traveling in disturbed areas of the world are requested to keep in touch with the nearest American diplomatic consular office." A. Yes.

Q. I call your attention to pencil writing on the side of the renewal application, and ask you if that was on the renewal application when you sent it on to Washington? A. No. 260

Q. With respect to renewals of passports, Mr. Waldron, is it necessary for an American citizen to send his passport down to Washington for renewal with an application, or can it be renewed at the local agency? A. It can be renewed at the local agency.

Q. And thereafter you send the renewal application down to Washington? A. The application, yes.

Q. And that is after you have returned the renewed passport to the applicant? A. Yes.

Q. And by looking at Government's Exhibit 6 in evidence, can you state until what date this passport was renewed? A. September 1, 1938. 261

Mr. Werner: Thank you, Mr. Waldron.

Cross Examination by Mr. Battle:

Q. Mr. Waldron, have you any individual recollection about what took place when this petition for renewal was signed? A. Nothing particular, to my mind, to give me any individual knowledge. There are so many—

Q. Where were you working then? A. At the Sub-Treasury Building, Wall Street.

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Elma V. Waldron—For Government—Cross.

Q. What was your job there? A. Agent of the Department of State.

Q. And did you see a good many applicants? A. Yes, sir.

Q. For passports and for renewals? A. Yes, sir.

Q. Your answers to the questions put to you by Mr. Werner are based on your general custom and procedure, aren't they? A. Correct.

Q. And not on any individual recollection? A. No, sir.

263

The Court: And also from looking at the application itself.

The Witness: Oh, yes. That is where I get my knowledge from, the application.

The Court: Your memory has been refreshed to that extent.

The Witness: Yes, sir.

Q. As I understand it, after looking at the application, you still have no individual recollection, have you?

Mr. Cahill: I object to the word "individual" as vague.

264

Q. Any recollection of that particular transaction.

Mr. Cahill: Apart from the paper.

A. Only what the paper shows.

Q. You have no recollection apart from the paper? A. Right.

Mr. Battle: I move to strike out those answers, if your Honor please, on the ground the witness has admitted he has no recollection as to what took place.

Elma V. Waldron—For Government—Cross.

The Court: Overruled.

Mr. Battle: I except. In that connection, if your Honor please, I wish to renew the objections I made to this line of testimony.

The Court: The same ruling.

Mr. Battle: I just want to make that general objection. Exception.

Q. Now, Mr. Waldron, I notice on this petition for renewal that it is dated February 2, 1937. Have you it before you? A. Yes, sir.

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Mr. Battle: What is the exhibit number?

Mr. Werner: The renewal is 6.

Q. Government's Exhibit 6, and the date of that petition for renewal is February 2, 1937, is it not? A. Yes, sir.

Q. And the original passport was issued according to the notation on this application on September 1, 1934, is that correct? A. That is right.

Q. So that that original passport had expired on September 1, 1936, hadn't it? A. It had, yes.

Q. So that when he came to see you in February, 1937 for a renewal, the original passport had expired? A. Yes, sir.

267

Q. I notice in this Exhibit 6 there are two lines here, "Application and passport submitted for Department's consideration by blank agency on blank" and I notice two check marks across those two lines. A. Yes.

Q. What does that indicate? A. It indicates the passport was not submitted to the Department for consideration.

Q. Nor the application? A. The application was submitted later, after the renewal was made.

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Elma V. Waldron—For Government—Cross.

Q. But did this indicate that neither the application nor the passport had been submitted at that time? A. Before the renewal was made?

Q. Yes. A. Yes.

Q. And is that the fact, or is that the custom, that the application for passport is usually submitted before the renewal is made? A. No, sir.

269

Q. Well, why is this printed item or application and passport submitted for the Department's consideration? A. If there is any doubt or if there is a protracted foreign residence against a naturalized citizen, the passport is submitted to the Department for consideration. Otherwise we have authorization to renew the passport at our agency.

Q. And in this case the application for passport was not submitted? A. Yes, sir.

Q. It was not submitted at the time of the renewal? A. To Washington, yes.

Q. But not submitted to you? A. The passport was submitted to me—presented to me with the application.

Q. That is, the application for the renewal? A. Yes, the application for the renewal.

270

Q. But the application for the original passport was not submitted to you? A. For the original passport?

Q. Yes. For the passport of September 1, 1934.

Mr. Werner: Do you want to show him the application?

A. I couldn't answer that.

Q. Do you recall whether the application for the passport of September 1, 1934, whether any application for that was submitted for the passport, was submitted to you at the time of the petition for the renewal? A. I would have to see the application.

Q. Here is the application.

Elma V. Waldron—For Government—Re-direct.

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Mr. Werner: Government's Exhibit 2.

Q. Government's Exhibit 2. A. No, that was not presented at the time the renewal was made.

Q. Now, these lines written through these pen lines, run through these different printed items here. Were they put there by you?

Mr. Cahill: Referring to what exhibit?

Mr. Battle: Exhibit 6.

272

A. Yes.

Q. And that includes the line through the words "Application and passport submitted for the Department's consideration"? A. That is right.

Q. Are you still in the Government service, Mr. Waldron?

A. Yes, sir.

Mr. Battle: That is all.

Re-direct Examination by Mr. Werner:

Q. Mr. Waldron, with respect to your looking at the original application, when the renewal application is presented to you: are those original applications kept in New York or Washington? A. In Washington.

273

Q. You don't ask for them to renew the passport? A. No, sir.

Q. But after you renew the passport you send the renewal application down to Washington? A. Yes, sir.

Mr. Werner: Thank you.

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Mary Josephine Hayes—For Government—Direct.

MARY JOSEPHINE HAYES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination, by Mr. Werner:

Q. Miss Hayes, what is your occupation? A. Information clerk of the Passport Agency.

Q. How long have you held that position? A. Since March of 1927.

275

Q. What are your duties as information clerk? A. Well, to meet people when they come in, at least, and they ask questions and want to know just what sort of application to fill out. I ask whether they are native citizens or naturalized citizens; then I determine that and give them a blank to fill out.

Q. Do you give them instructions? A. That is right. They ask questions, they go away and come back and they might be doubtful about something or might not want to fill in the form and they come back and I tell them they have to fill out all the questions.

Q. Different forms are used for native citizens and for naturalized citizens? A. That is right.

276

Q. Miss Hayes, lying on the board in front of you is Government's Exhibit 2 in evidence. I ask you to examine that and state, if you can, whether or not you have ever seen that before?

Mr. Battle: If your Honor please, I object to that on the grounds stated, and particularly on the ground that applies to the previous witness and this witness also, that these documents, both of them have been conceded by the defendant and therefore any further testimony as to them is unnecessary and immaterial.

Mary Josephine Hayes—For Government—Direct.

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Mr. Werner: Your Honor, the only thing that has been conceded—

The Court: Objection overruled. No argument.

Mr. Battle: Exception.

Q. Miss Hayes, will you look at Government's Exhibit 2 and state, if you can, whether you have ever seen that before? A. Yes, I have seen it before. I recognize my writing on there. I recognize the printing, and my signature on the other side, and the countries to be visited.

Q. Now, by your printing, do you mean the words, "Browder, Earl Russell," on the front page? A. That is right.

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Q. Now are the words "France, England, Germany, Pleasure" also in your writing? A. That is in my writing. Upon questioning the man he told me where he was going.

Q. In other words, that space was left blank and you asked the man where he was going?

Mr. Battle: I object to that.

The Court: Objection sustained. It is leading.

Q. Was that space left blank when the application was presented to you? A. Yes. That space was left blank, and in some cases I would send them back, but where there would be quite a few in the office and they would lose their place on line, I would question the applicant, where they were going and what the object of their visit was, and to save time, to save their place on line, I would fill it in.

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Q. That is how you came to fill in these words? A. Yes, that is right.

Q. Will you turn Government's Exhibit 2 over and see whether your initials appear under the signature, "Earl Russell Browder"? A. Yes, they do.

Q. Can you state to his Honor and the jury the circumstances of your putting your initials there?

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Mary Josephine Hayes—For Government—Direct.

Mr. Battle: I object to that unless she can do so of her own recollection.

The Court: Objection overruled.

281

A. My own recollection is that I had remembered Mr. Browder from reading in the print about his attending hearings down there—of course you know what they are. I know that he is a popular man and about his activity in life. As soon as I seen Mr. Browder I recognized it was Earl Browder from reading the papers about the party he was connected with.

The Court: Then you have a present recollection of him?

The Witness: Yes, I have a present recollection.

The Court: Of the man himself?

The Witness: Of the man that claimed himself to be that name.

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Q. Did he sign his name in your presence? A. Yes, he did sign his name in my presence. After he signed his name then I witnessed it, and also at the bottom his brother signed his name which at that time I didn't know was his brother. I asked him if it was the same name, what relation there was, connection. He said, "I am his brother."

Q. Did you fill in "Brother"? A. I put in "Brother", that is right.

Q. After that was done, what did you do, Miss Hayes? A. Well, then I attached the other picture onto the application and told him to take it down to the agent to be sworn as to the truth of his testimony.

Mr. Battle: No questions.

(Short recess.)

John O. Bell—For Government—Direct.

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JOHN O. BELL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Bell, what is your occupation? A. I am executive assistant to the chief of the Passport Division, State Department.

Q. How long have you been such? A. I have held that position for approximately six months.

Q. Prior to that what was your position? A. Prior to that I was a technical assistant in one of the sections of the Passport Division of the State Department.

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Q. What are your present duties, Mr. Bell? A. I have administrative supervision subject to the chief's orders, of course, over the work of the Passport Division.

Q. Who is the chief? A. The chief is Mrs. Ruth Shipley.

Q. I take it you are familiar with the operations of the passport division? A. I am.

Q. All phases? A. Correct.

Q. Now, what is the procedure, Mr. Bell, with respect to obtaining a passport? A. A person who desires to obtain a passport must execute an application for such document. The application may be executed before the clerk of any Federal court or before the clerk of a State court having authority to naturalize aliens or before one of the Department's passport agents.

285

Q. Must that application be executed on a form provided by the Department, such as Government's Exhibit 2 in evidence? A. That is correct.

Q. And that form varies, depending on who makes the application, whether it is a naturalized citizen, sometimes? A. That is correct. We have one form for native born citizens, another for naturalized citizens.

Q. When the passport is executed, and by executed I mean when the applicant appears to make application and

John O. Bell—For Government—Direct.

sign his name, must he appear in person or can he sign his name and then send the application in? A. No, the applicant must appear in person before the clerk of the court or passport agent.

Q. Must he bring someone with him? A. The applicant must bring in some person who can identify him who has known him for two years or more.

Q. Is there anything else that the applicant must bring with him? A. Yes, the applicant must bring with him two photographs of himself, he must have the statutory fee
287 for a passport, which is \$9.00, and he must also pay the execution fee to the officer who executes his application. He must also bring with him evidence of his citizenship; if he is a native born citizen he would have to bring evidence that he was born in the United States. If he was a naturalized citizen, he would have to bring evidence that he was naturalized as a citizen of the United States.

Q. Why two photographs? A. Two photographs, because one photograph is fastened to and becomes a part of the application itself which is filed in the Department in Washington. The other photograph is affixed to the passport.

Q. Must these photographs be duplicates? A. They must
288 be exact duplicates.

Q. In the event that a naturalized citizen appears, must he bring his naturalization papers with him? A. Yes, he must.

Q. And must he send them to Washington? A. That would depend on where he executed his application. If he executed his application before the clerk of the court, it would be sent to Washington. If he executed his application before the passport agency, it would not necessarily. It might.

Q. If it was not sent to Washington is a notation made on the application concerning whether it was exhibited to the applicant? A. That is correct.

Q. And similarly, is a notation made on the naturalization papers? A. A notation is made on the naturalization papers when the passport is issued.

Q. A stamp is put on the back of it? A. Yes.

Q. In the event that the applicant is a native citizen, Mr. Bell, what proof of citizenship must he supply? A. Well, the department's regulations require that he submit a birth certificate filed on or about the time of birth, or if he can't submit that, a baptismal certificate, or if neither of these documents is available, he must submit affidavits of persons who have personal knowledge of his birth to the effect that he was born here. . . . 290

Q. If a close relative appears with the applicant, is a birth certificate necessary? A. If a close relative appears who has sufficient knowledge to testify to the fact of the applicant's birth, he may submit his affidavit in his application since that affidavit states that the identifying witness knows the facts in the application to be true.

Q. I call your attention to Government's Exhibit 2, which is on the board in front of you, passport application in the name of Earl Russell Browder, and ask you if you can state what procedure was followed in that case? A. This application indicates that Mr. Browder executed his passport application in the passport agency in New York before an agent of the Department, that he was identified by his brother, William Browder, who testified that the facts in the application were true. The application was sent to Washington and there a passport was issued upon it. Do you want to know how the procedure went? 291

Q. Now, I am asking you this question: can you state, Mr. Bell, the procedure of the Department in Washington when the passport application is received? A. Yes. An application comes in and is received from either registered mail or from a locked pouch from one of the agencies in what is known as the cashier's section. In that section the fee is detached from the application and a stamp is at-

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tached on the application indicating that the fee has been received. The number is also placed on the application in the lower right hand corner below the stamp I just mentioned, which is called the fee number. That is a number which we use for keeping an accounting record of the operations in the division. Then the application goes from the cashier's office to the passport section of the division of communications and records, where it is given a file reference number, and a certain card record is made of it. Then the application comes from that section back to our division into a section known as the examining section. And in that section there are examiners who are people trained in citizenship or in passport procedure. They look over the application to determine if it conforms with legal requirements and to see that evidence of citizenship has been submitted. If they find that to be the case they approve the application by writing their individual name on the face of the application and below their name the date on which they did so.

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Q. Is that written in crayon? A. Ordinarily, yes.

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Q. Before you go any further, I would like to ask you this question: when an application is received, does the Department thereupon look into its files for any and all previous applications made by that individual? A. That is true. At the time it is given a file record number and the card records made, a notation is made upon the application, indicating whether there is any previous record in that particular name.

Q. All right, proceed, Mr. Bell. A. After the examiner has indicated his approval of the application by putting his name and the date upon it, he indicates by a letter at the top of the application the type of the passport to be issued. By the type I mean whether it is to be an ordinary passport or whether it would be a diplomatic passport such as would be issued to a diplomatic officer.

The application is then taken to a desk known as the authorization desk, where a record is made of the fee number, the name of the person applying for the passport, and the number of the passport which will be given. A stamp is placed on the application at that desk indicating that a passport was issued on whatever date it is, and the number is placed at the top of the application, indicating the number of the passport.

The authorization desk is a part of the passport section where the passports are written, and the application is then turned over the person at the next desk, who actually writes the passport. They have a blank book and they write in the passport the names—

Q. By a blank book, do you mean a book like Government's Exhibit 5? A. Yes. It is just like this. It has a number printed on the top. That is the number of the passport. Inside it leaves blank the name of the bearer and his personal description, whether he is accompanied by wife, and so forth. The writer of the passport takes the information from the application and transcribes it onto the passport—the name, whether he is accompanied by wife, the date on which the passport is written, the personal description of the applicant, his height, the color of his hair, the color of his eyes, the date of birth, his occupation. This passport is then turned over with the application to a boy in the mailing section and in that section he takes the photograph that is with the application and fastens it with glue into the passport and then he puts through a machine the seal of the Department on the photograph and also on this red wafer. He also impresses the legend which says "Photograph attached, Department of State, Washington" in the passport. Then the passport is ready to be mailed. It is then placed in an envelope which is given the address that the applicant requests that the same be mailed, and it is sent out by registered

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mail, or perhaps sent to one of the passport agencies if the applicant requests that action to be taken.

Q. What is the procedure, Mr. Bell, with respect to renewal of applications? A. The renewal applications follow a similar procedure in that an application comes in, is given a renewal fee number and the fee stamp placed upon it. It goes to the record section for clearance and the card record has to be made, and it comes to an examiner and the examiner examines the application for renewal, indicates his approval of it by placing his name on it in the same fashion.

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Now, there comes a difference in the procedure in that it goes to a different clerk and the renewal is placed in the passport by hand. That is, there is a rubber stamp which we have, a blank rubber stamp, which is stamped in the passport and a renewal number that appears on the top of the renewal application is written in that blank space, the date of the renewal is written in by hand and the date of the expiration. It is signed by some person authorized to do so and the seal of the Department is placed on the stamp and it is mailed out in the same fashion.

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Q. And that renewal may be done at the local agency? A. The passport may be renewed either in the Department, sent in by the individual or the individual may appear at a passport agency and have the renewal occur there. It can be renewed by one of our passport agents as well as in the Department.

Q. Mr. Bell, can you explain to his Honor and the jury just what all notations on Government's Exhibit 2 indicate? A. I think I can.

Q. Before you start, Mr. Battle has kindly lent me the photostatic copies. Perhaps the jury can follow you better with those before them. (Handing to jury.)

Now, will you explain the notations, Mr. Bell, beginning at the upper right hand corner and indicating just where

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on the application the notations appear? A. Well, you will see in the immediate upper right hand corner the number 145182. That is the number of the passport. That is the same number that is printed in the passport itself. Immediately below that number you will see a stamp which says, "Passport issued September 1, 1934, Department of State." That is the stamp placed on at the same time that the number of the passport is placed on there, indicating that on that particular date a passport was actually issued at Washington.

—In the left hand upper corner there is a penciled initial which indicates that a clerk checked the writing of the passport against the information in the application to make sure that the passport was correctly written. The large red crayon name and date in the application is the name of the examiner who approved it, indicating that the issuance of the passport was approved on that particular date.

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Q. You mean the word "Dismon 9/1"? A. That is right. There is also a stamp right next to Miss Dismon's name, which says, "Relative as witness attests to applicant's citizenship." That is the stamp placed on the application in the passport agency when the application was sent to Washington, calling attention to the fact that instead of submitting a birth certificate the applicant had established his citizenship through the testimony of his brother.

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There is a stamp immediately below that which says "Filed September 6, 1934." That is the stamp indicating that after the passport was issued, the application was placed in the files of the Department on that date.

There is a stamp in the lower right hand corner that says, "Passport fee received September 1, 1934." That is the stamp I spoke of before placed on the application in the cashier's office; indicating that the sum of \$9.00 had been turned into the Department.

Below that is the number 17168, which is the fee number, an accounting record number. The initials in the lower

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left hand corner, "C"—I can't read that. It looks like "REC". There is a notation made in the record section, indicating that the files had been searched.

Q. What does that indicate, that there were previous passport applications in the name of Earl Russell Browder made by the individual who made the passport in the name of Earl Russell Browder? A. The "C" is a symbol which we use for the word "cleared." By the word cleared, we mean that the files of the Department had been searched and that no record of any passport application or of any renewal application in that same name as appearing on this application has been found.

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Q. And your files work by name only? A. That is correct. Now, as regards the other notations in the application—

Mr. Battle: Will you ask him about the notation in the middle?

Mr. Werner: Yes, we will come to that in a minute, Mr. Battle.

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Q. Mr. Bell, with respect to the notation in the middle of the application, we will pass that for the moment because that was made at a later date, was it not? A. Yes, it was.

Q. Will you explain the notation on the second page of the application? A. On the second page of the application, immediately below the signature of the applicant, you will see the initials "M. J. H." Those are the initials of Miss Hayes, a clerk in the passport agency at New York, and they indicate that Mr. Browder signed his name to the application in her presence.

Down in about the center of the page you will see two stamped impressions each saying, "New York Pouch." That is a stamp placed on the application in the New York passport agency, which indicates that the applicant requested that instead of sending the passport to him by

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mail, it be delivered to the New York agency, where he could appear and obtain it.

Q. Just a moment, Mr. Bell. I show you Government's Exhibit 8 for identification and ask you if that is a record that the passport which was issued on the application, Government's Exhibit 2, was sent to the New York agency by the New York Pouch? A. Yes, it is.

Q. That is a record kept in the regular course of business by the passport division? A. Yes, we keep such a record every day.

Q. And when does that record indicate that the passport was sent? A. It indicates that on the evening of September 1st, 1934, the passport bearing number 145182 issued in the name of Earl Russell Browder was sent by locked pouch to the New York passport agency.

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Q. Will you examine Government's Exhibit 5 in evidence and state if you can, whether that is the passport referred to? A. This is the passport issued upon the application known as Government's Exhibit 2.

Q. And referred to in the mailing, Government's Exhibit 8 for identification? A. Yes.

Mr. Werner: I offer Government's Exhibit 8 for identification in evidence. 309

(Government's Exhibit 8 for identification received in evidence.)

Q. Will you proceed, Mr. Bell? A. About the notations?

Q. Yes, sir. A. Immediately opposite the stamp I spoke about which says, "New York Pouch" you see the initials in blue erayon which are the initials of the individual who actually wrote the passport, that is, who typed on the machine and placed the name of the bearer in this passport. There are also the initials "M. J. H." opposite the name of the identifying witness; that has the same significance

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as it had above, to-wit, that the identifying witness in this application signed his name in Miss Hayes's presence.

I don't know if there are any other notations on here that you want to know about.

Q. Are there any other notations? A. Well, there are some blue crayon crossmarks.

Q. Who were those put in by? A. They were put on by a clerk to indicate that that part of the application was not pertinent.

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Q. I show you Government's Exhibit 6 in evidence, a renewal application in the name of Earl Russell Browder, and ask you if you can tell from that whether a passport, Government's Exhibit 5, was renewed? A. This application indicates that the passport issued on this application—that passport (indicating).

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Q. You mean Government's Exhibit 5? A. Government's Exhibit 5. The reason I know that is because the number of that passport appears on here as well as the date of its issue and the name under which it was issued. This indicates that the passport was renewed in the New York passport agency on February 2, 1937, to be valid until two years from its original date of expiration, that is, until September 1, 1938. The passport is good for two years and can be renewed for two years more upon the payment of a fee of \$5.00.

Q. Will you explain the other notations appearing on Government's Exhibit 6? A. Yes. There is the notation immediately in the center of the application, the name "Owens", and the date "2/11/37" which is the name of the examiner who checked the action of the New York passport agency for correction and indicating his approval of that action by placing his name on that particular date.

There is a stamp in the immediate top center which says "File" and the letters "PD" and then above, superimposed upon that the penciled initials "RW". That is an initial made by a clerk at the authorization desk in the depart-

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ment indicating that she had made a record of this renewal and the fee having been paid and sent it to file. There is a notation and stamp in the lower right hand corner indicating that the renewal fee was received in the department, and there is a number below that, indicating it was given that particular number.

Q. Now I call your attention to the writing on the side,

"130—Appl 9/1/34 See 130—Johnson Richard Corres 6/ 8/36
130—Berger, Harry " 4/15/36
130—Browder, Earl Refs (4)"

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and ask you what those notations are? A. Those notations are made in the record section, just indicating that there are other files to which a cross reference is made.

Mr. Battle: Will you read that answer, please.
(Answer read.)

Q. Now, Mr. Bell, I call your attention to Government's Exhibit 2 again, the original passport application in the name of Earl Russell Browder, and call your attention to the large stamp in the center of the page. Mr. Battle asked what that was and I said we would come to it. Will you explain that? A. In order to explain that properly I think it might be well to refer to this exhibit. 315

Q. All right, will you do that. Government's Exhibit 6. A. Yes, sir. Because on the back of this renewal application there is a stamp which reads, "This passport not valid for travel in Spain." The presence of this stamp on this application indicates that that stamp was also placed in the passport at the time it was renewed. The reason for the placing of that stamp was because passports were not being issued for travel in Spain in ordinary circumstances. That stamp can be found in the passport.

Q. Government's Exhibit 5? A. Yes; Government's Exhibit 5, is it? Five, yes. The stamp can be found on the

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passport in page 8, no, on page 5. That is where I looked for it first and I couldn't see it for the entry stamps. This stamp appears right here, "This passport not valid for travel in Spain." As I say, we were restricting passports for Spain. We were not issuing them to any individual wanting to go there, and any person who got a passport was automatically given that stamp in his passport.

Q. That was during the period of, shall we say, unrest in Spain? A. Yes.

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Q. Thereafter did the division receive a letter, Government's Exhibit 7 in evidence, with respect to the right of the user of the passport to travel in Spain? A. Yes, Government's Exhibit 7 is a letter addressed to the chief of the passport division, requesting that Mr. Browder's passport be made valid for travel in Spain, as a correspondent for the "Daily Worker."

Q. Did you receive that? A. It was received in our Department.

Mr. Werner: Your Honor, may I read this letter to the jury?

The Court: Is it marked in evidence?

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Mr. Werner: Yes, your Honor.

(Government's Exhibit 7 read to the jury.)

Q. Now, will you tell his Honor and the jury just what procedure was followed after the receipt of that letter. A. The letter having been received, the case was inspected and, as it was a practice of the Department to make passports valid for travel in Spain for news correspondents, when their status as such had been established, a notation was made upon this letter, which reads, "Amended to be valid for Spain; news correspondent," and the name of the individual who directed that action in our division. The passport was then amended, that is, the word we use for calling this procedure, and a stamp was placed in the pass-

port, the same stamp was placed on the letter and the same stamp was placed on the original application for that passport.

Q. Is that the large square stamp which you previously referred to? A. That is correct. The stamp says, "Department of State. Amended." In the stamp, in all three places, appear the words, "The bearer is a newspaper correspondent assigned to Spain and his passport is valid for travel in that country." That was an action taken, as indicated by the date appearing in the stamp, November 26, 1937.

Q. Do you know in whose handwriting that is? A. The handwriting in the stamps?

Q. Yes? Do you know? A. Well, in the passport itself, the amendment is written on a machine and the only handwriting which appears is the signature of the Chief of Division, above her title.

Q. That is Mrs. Shipley? A. That is correct.

Q. Mr. Battle inquired of a previous witness who wrote, "The bearer is a newspaper correspondent," et cetera, inside the square on the passport application. Do you recognize that handwriting? A. Yes, that is the handwriting of one of the employees of the Division. Her name is Mrs. Lindsay, but she wrote that in there—we had it pretty well set, the sort of language we would use in these cases, and when the person who approved the application indicated that it was to be amended for travel in Spain as a news correspondent, she knew what language was to be used and she wrote that in there and then typed it on the machine in the passport.

Q. What is the procedure of the Department with respect to all passports which have expired or another passport presently issued to the same individual who is making a new application? Must that passport be shown to the Department at the time the new application is made? A.

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John O. Bell—For Government—Cross.

The regulations require that the person applying for a passport submit for cancelation his previous passport.

Q. May a person have two valid outstanding passports at the same time? A. No.

Q. One in one name and another in another name? A. No, he may not. He may not even have two valid passports in his own name at the same time.

Q. Where did you first see that passport, Exhibit No. 5, Mr. Bell? A. Well, the first time that I can be positive I saw it was in September, 1938.

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Q. In whose possession was it? A. At the time I saw it, Mr. Browder gave it to Mrs. Shipley.

Mr. Werner: You may cross-examine.

Cross Examination by Mr. Battle:

Q. What was the occasion of giving it to Mrs. Shipley in September, 1938? A. He called at the Department to see her and turned the passport over to her.

Q. On what occasion was he seeing her, do you know?

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Mr. Werner: If you know, Mr. Bell, of your own knowledge.

A. It was in September, 1938, that he called. Now, he called to see Mrs. Shipley and went into her office and I was in the office immediately outside, and she called me in at the time Mr. Browder gave her the passport and handed the passport to me and I took the passport out. That is the extent of my knowledge.

Q. What was his object in surrendering that passport?

Mr. Werner: Your Honor, I submit Mr. Bell is not a mind reader.

Mr. Battle: You asked him the same question.

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The Court: It raises the same question we discussed before. I think there has been enough here to show it is pretty well indicated that in September, 1938, Mr. Browder made an application for another passport and he surrendered this one at that time. Is that enough?

Mr. Battle: Yes, sir, that is quite enough, your Honor.

Q. Mr. Bell, did you have anything to do personally with the application that Mr. Browder filed in August, 1934? A. Nothing to do with it personally.

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Q. Your testimony here has just been given from the general knowledge of procedure of the Department? A. Yes, I am quite familiar with that procedure.

Q. I say, it is not given from any personal knowledge as to what Mr. Browder did or did not do in connection with the 1934 passport? A. That is correct.

Mr. Battle: Will your Honor pardon me just a moment?

Q. What was your statement, Mr. Bell, in regard to these annotations on the side of the application for renewal?

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Mr. Battle: May I submit to the jury copies of the renewal, which is already in evidence?

The Court: You haven't an extra copy of that for me?

Mr. Werner: I am sorry, your Honor, I apologize. (Mr. Battle hands the same to the jurors individually.)

Q. What did you say, Mr. Bell, were these notations here on the lefthand margin of the petition for renewal? A. I said I believed that those were notations made in the record section indicating cross references to other files.

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John O. Bell—For Government—Cross.

Q. Indicating cross references to other files? A. Yes.

Q. That is, files containing applications for passports?
A. Well, they might or might not contain applications for passports. They were files containing applications for passports or correspondence regarding passports. The letters, 130, indicate that particular classification.

Q. That is, the letters 130 indicate passports issued to native born citizens, don't they? A. No, they do not.

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Q. What do they indicate? A. They indicate that there has been some correspondence or perhaps an application for some person striving to obtain a passport. There are many hundreds of files in that number that are not citizens.

Q. I understood the testimony of the gentleman in charge of the records to be that 130 indicated an application made by a person claiming to be a citizen. A. That is correct.

Q. And you agree? A. And it also includes correspondence regarding the passports.

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Q. So that notation means that there was correspondence concerning this application and that that correspondence appears in these two files? A. It does not indicate that there has been correspondence regarding Mr. Browder's application necessarily. I haven't the files here. I do not know what you would find if you would look in those files. That indicates that there is a reference made in that particular file which should be looked at in connection with this case.

Q. When was this notation made on it, Mr. Bell? A. That was made at the time the application was received in the Department, and that would be on or about the 5th of February, on that.

Q. Do you know in whose handwriting it is? A. I could not identify the handwriting. I know where it was made but what individual wrote it, I could not say.

Q. You made some statement, Mr. Bell, about Mrs. Shipley's handwriting appearing on the passport. A. Yes.

Q. Just where does that appear? A. Page 6.

John O. Bell—For Government—Cross.

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Mr. Werner: That is page 6 of Government's Exhibit 5?

The Witness: Yes.

Q. Page 6 of the passport, Government's Exhibit 5. And that notation reads as follows, "November 26, 1937. This passport is amended to read, the bearer of this passport is a newspaper correspondent duly assigned to Spain and his passport is therefore valid for travel in that country. R. B. Shipley, Chief of Passport Division." That is the same notation or stamp that appears on the face of the application, isn't it? A. Yes.

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Q. And that is Mrs. Shipley's handwriting? A. Yes, it is.

Q. So that application to amend the passport was made to Mrs. Shipley? A. Oh, no, except as chief. It is a practice—was Mrs. Shipley's practice to personally sign any amendment making a passport valid for travel in Spain. All other amendments are signed for—as you will note here, in the form of the regular stamp, it says, "R. B. Shipley, Chief of Passport Division by," and there are one or two individuals authorized to put their names in that space, indicating that they are acting under her authority.

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Q. But this particular amendment here was signed by her personally, wasn't it? A. Yes. All amendments for travel in Spain were signed by her, and that was one of them.

Q. You know her handwriting? A. Yes, I do.

Q. And that is her personal handwriting? A. Yes.

Mr. Battle: That is all. Thank you.

Mr. Werner: Your Honor, may I recall Mr. BEN at a later time for further testimony?

The Court: Yes.

Mr. Battle: What is it?

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Loftus Murray—For Government—Direct.

Mr. Werner: I should like permission to recall Mr. Bell, and there are several witnesses, from time to time, I should like to recall as their testimony is necessary.

Mr. Battle: Mr. Bell is to remain here?

Mr. Werner: Yes.

Mr. Battle: Very good.

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LOFTUS MURRAY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. What is your occupation, Mr. Murray? A. I am a clerk at Ellis Island in the Record Division.

Q. What do you do? A. Well, among other things, I search manifests in connection with naturalization matters and immigration matters.

Q. When a ship arrives at the Port of New York, Mr. Murray, must an officer of that ship or the steamship line submit a manifest including the names of every passenger and member of the crew? A. Yes.

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Q. And those records are kept in your Department? A. That is right.

Q. Are any records kept with respect to the entry of naturalized citizens or native citizens with the exception of the ship's manifests? A. There are no other records kept.

Q. So that if I should give you the name of a native or a naturalized citizen and ask you if and when he arrived at the Port of New York on any occasion, you could not find that individual's entry unless you were given either the ship or the date? A. I would have to have the ship or the exact date and the port of departure.

Loftus Murray—For Government—Direct.

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Q. And if you did not have that, through approximately how many names would you have to search? A. Several millions. We have names from 1897 of all aliens arriving in this country to the present time.

Q. For native citizens you have only the manifests? A. That is all.

Q. Have you produced here the manifest of the Steamship Berengaria, arriving at New York on April 30, 1937?

A. Yes.

Q. And the manifest of the Steamship Aquitania arriving at New York on February 15, 1938? A. I have that.

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Mr. Werner: I ask to have these marked for identification, please.

(Berengaria manifest marked Government's Exhibit 9 for identification; Aquitania manifest marked Government's Exhibit 10 for identification.)

Q. Does Government's Exhibit 9 for identification reflect the arrival of Earl Russell Browder at the port of New York—

Mr. Battle: I object to stating what it shows unless it is offered in evidence. It is only marked for identification as yet.

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Q. Is that a record kept in the regular course of business? A. This is the original manifest kept at Ellis Island.

Mr. Werner: I offer it in evidence.

Mr. Battle: Let me look at it, please.

Q. And the same is true of Government's Exhibit 10 for identification? A. Yes.

Q. It is the original manifest? A. Yes.

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Loftus Murray—For Government—Direct.

Mr. Werner: I offer that in evidence.

Mr. Battle: Will your Honor give me just a moment to look at these?

The Court: Certainly.

Mr. Battle: No objection.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Battle: What are you marking in evidence, how much of that?

Mr. Werner: The manifest.

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Mr. Battle: That sheet, you mean, that whole sheet?

Mr. Werner: The whole page constitutes the complete manifest—

Mr. Battle: The whole page?

Mr. Werner: The whole book constitutes the complete arrival. I am offering the whole book in evidence.

The Court: I think a page might be sufficient, or a portion there.

Mr. Werner: The point is, the page—

The Court: Apparently it is, I am satisfied.

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Mr. Battle: What is the whole thing? Are these the arrivals of passengers?

The Court: I am sorry I made the point.

Mr. Battle: I see no reason for putting in anything except this particular page or this particular entry.

Mr. Werner: Well, the particular page does not show the certification by the captain and the surgeon, which is corroborative of the page. That is the sole reason.

Mr. Battle: Where is that?

Mr. Werner: Here (indicating).

The Court: Why can't it all be marked and then we will allow Mr. Battle to pick out such portions

Loftus Murray—For Government—Cross.

as he thinks are pertinent to this inquiry, and the rest of it will be considered completely out.

Mr. Werner: That is it.

Mr. Battle: That is satisfactory.

Mr. Werner: I offer Government's Exhibit 10 for identification in evidence

(Government's Exhibit 10 for identification received in evidence.)

Q. Mr. Murray, by examining Government's Exhibit 9 in evidence, can you state whether one named Earl Browder, giving his birth place as Wichita, Kansas, 20th May, 1891, and his address in the United States as 35 East 12th Street, New York, N. Y., arrived at the port of New York on the S. S. Berengaria, sailing from Cherbourg, April 24, 1937, and arriving April 30, 1937? A. Yes, the manifest shows that.

Q. From Government's Exhibit 10 in evidence can you say whether an individual named Earl Browder, allegedly born at Wichita, Kansas, May 20, 1891, giving his address as 7 Highland Place, Yonkers, N. Y., arrived on the S. S. Aquitania, sailing from Cherbourg, February 9, and arriving at New York, February 15? A. Yes, that is so.

Mr. Werner: You may cross-examine.

Cross Examination by Mr. Battle:

Q. Mr. Murray, all that you can testify about is that these are the manifests that you produce from your records? A. Yes.

Q. You do not know personally anything about the landing of Mr. Browder? A. No.

Mr. Battle: That is all.

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Jacob Levy—For Government—Direct.

JACOB LEVY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Levy, what is your occupation? A. I am a customs clerk employed in the office of the Collector of Customs in New York.

Q. Has the office of the Collector of Customs jurisdiction of and supervision of records relating to customs declarations made by people arriving at the port of New York?

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A. They do.

Mr. Werner: I will ask to have these marked for identification.

(Marked Government's Exhibits 11 and 12 for identification.)

A. Are Government's Exhibit 11 for identification and 12 for identification customs declarations in your files?

A. That is correct.

Q. Mr. Levy, are your files kept alphabetically, or, to find a customs declaration of an individual, must you know the boat and time on which that individual entered the port of New York? A. It is necessary to know the name of the boat and the time of entry to get baggage declarations.

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Mr. Werner: You may cross-examine.

Mr. Battle: Are you going to offer them?

Mr. Werner: If you have no objection, I will put them in now.

Mr. Battle: I will examine them later.

Mr. Werner: Do you object?

Mr. Battle: I cannot tell you. I want to look them over first.

Jacob Levy—For Government—Direct.

Mr. Werner: I offer Government's Exhibits 11 for identification and 12 for identification in evidence.

Mr. Battle: Let me look at them, please.

(Mr. Werner hands same to counsel.)

Mr. Battle: We have no objection.

(Government's Exhibits 11 and 12 for identification, received in evidence.)

Mr. Werner: Do you wish to cross-examine?

Mr. Battle: No, no questions.

Mr. Werner: Government's Exhibit 11 in evidence is a baggage declaration entry in the name of Earl Browder. Government's Exhibit 12 in evidence likewise is a baggage declaration entry in the name of Earl Browder. Each shows an entry on a given date at the port of New York. You gentlemen may desire to examine them.

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The Court: We will take a recess until quarter past two.

Mr. Battle: What hour did your Honor adjourn to?

The Court: Two-fifteen. Have you any suggestion as to whether we have a longer adjournment?

Mr. Battle: Will your Honor make it two-thirty? 351

The Court: That will be up to the jury.

Mr. Battle: The jury has no objection to making it two-thirty?

The Court: All those in favor of two-thirty will raise their right hand. Two-thirty.

(Recess until 2:30 p. m.)

(Afternoon session.)

Mr. Battle: If your Honor please, there are two exhibits just marked in evidence just before the recess, two customs declarations, Government's Ex-

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Knute B. Larson—For Government—Direct.

hibits 11 and 12. I should like to read them to the jury before proceeding.

The Court: All right.

(Mr. Battle read from Government's Exhibit 11 and 12 to the jury.)

KNUTE B. LARSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

353 Direct Examination by Mr. Dunigan:

Q. Mr. Larson, what is your occupation? A. Inspector of immigration.

Q. At the port of New York? A. Correct.

Q. And how long have you been an inspector in the immigration service? A. Since 1924.

Q. Will you explain briefly to the Court and jury the duties of an immigration inspector such as yourself. A. I board a cutter at the Battery, proceed down to the ship, meet the ship anywhere between Quarantine and the pier, board the ship and examine with my colleagues all the passengers and members aboard the ship.

354 Q. You say that you board a cutter and meet the ship down the bay? A. Correct.

Q. Can you tell us whether or not you are one of the first to board an incoming ship? A. The doctor at the present time is the first person to board the ship to find out about the health conditions aboard the ship. After that the customs and the immigration board the ship immediately.

Q. So that, Mr. Larson, when you board the vessel all of the persons on board that vessel must have been on at the last port that the vessel touched, is that true? A. That is correct.

Q. I show you a manifest that is marked Government's Exhibit 9 in evidence of the SS. Berengaria, and ask

Knute B. Larson—For Government—Direct.

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you to examine it and state if you see on the particular sheet before you the name of a passenger by the name of Earl Russell Browder? A. I do.

Q. What was your answer? A. I do. I see his name right here (indicating).

Q. Now, I direct your attention to the signature appearing at the bottom of the page and ask you if you recognize that signature? A. That is my signature, correct.

Q. Can you tell from examining the date of the arrival of the SS. Berengaria? A. I can.

Q. And would you tell us the date, please? A. April 30, 1937. 356

Q. Now, by looking at that particular page, Mr. Larson, and directing your attention again to your signature, are you able to state if you checked off the names that appear on that page? A. Yes, I can state that because otherwise my signature would not appear at the bottom of the page and I would not sign my name unless each and every passenger on this manifest would have been checked off.

Q. I show you Government's Exhibit 5 in evidence, Mr. Larson, a passport in the name of Earl Russell Browder. A. That is correct.

Q. And direct your attention to the stamp appearing on this page here reading, "Immigration and naturalization Service, Department of Labor, Arrived April 30, 1937." A. That stamp was placed there by me. 357

Q. You say that you placed that stamp on the passport yourself? A. I did.

Mr. Battle: I object to this on the ground that has been raised before, that this use or so-called use of the passport is not a use which is contemplated by the statute or within the prohibition of the statute.

The Court: Overruled.

Mr. Battle: Exception.

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Knute B. Larson—For Government—Direct.

359

Q. Mr. Larson, would you tell us the procedure that you employ in checking off names on the manifest in connection with passports? A. Yes. Each and every passenger is issued a landing card by the purser of the ship. This landing card has a number of the manifest. In this particular case that would be number 6. That is the first number on the landing card. The second number on that landing card would be the line number, which in this case happens to be 2. So the landing card would be Manifest No. 6 and Line No. 2. That is so as to make it easier for us to find the name on the manifest right away. And the passenger has to present the documentary proof that he is the person alleged to be on that manifest, and he presents that landing card and whatever evidence he has of his citizenship, as in this particular case he is a United States citizen. If he has a passport we stamp the passport and the landing card, which gives him permission to go ashore.

Q. As you check off the names on the manifest; is that correct? A. That is correct.

360

Q. When the passport is presented to you, Mr. Larson, do you examine it in any way in connection with the individual who presented it to you? A. We naturally compare the picture with the person that applies for admission. We also look at the place of his birth if he was born here, and if he was a naturalized citizen we would ask him where he was naturalized, and so forth, to satisfy ourselves that he really is a United States citizen.

Q. And the picture appearing on the passport is a likeness of the individual who presented that passport? A. That is correct.

Q. Mr. Larson, when a person comes into the port of New York from a foreign port he must demonstrate to you his right to enter the United States, isn't that so? A. Positively.

Knute B. Larson—For Government—Cross.

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Q. And that is true of native born American citizens as well as others? A. Yes.

Mr. Battle: I object to that, if your Honor please. This is calling for a conclusion of law. I object to it as incompetent, and immaterial. It is a conclusion.

The Court: I will sustain that objection.

Q. Is a passport, Mr. Larson, one of the methods used by individuals to demonstrate their right to enter this country? A. Yes, that is true. 362.

Mr. Battle: I object to the last part of it. I object to the conclusion.

The Court: Overruled.

Mr. Battle: And calling for an answer which is really a question of law.

The Court: Overruled.

Mr. Battle: Exception.

Q. What was your answer, Mr. Larson? A. That is true, I said.

Q. And a passport was used by Earl Russell Browder in this particular case? A. Yes. 363

Mr. Dunigan: That is all, Mr. Larson. Thank you.

Cross Examination by Mr. Battle:

Q. You are in the Immigration Department, are you not, Mr. Larson? A. Yes, Counselor.

Q. And that Department deals with aliens? A. That is correct.

Q. And only with aliens? A. What is that?

364

Knute B. Larson—For Government—Cross.

Q. And only with aliens? A. Well, as far as immigration laws are concerned, but we must also check off all American citizens to ascertain whether they are American citizens or not.

Q. And if they are citizens then you have no further jurisdiction over them? A. Not if we are satisfied they are citizens.

Q. So when a man lands and if he has any evidence that satisfies the inspector that he is an American citizen, then the inspector is through with him? A. That is true.

365

Q. He can land or not, just as he feels? A. But he must produce some evidence.

Q. But after he satisfies the immigration inspector that he is an American citizen he can land or not, just as he feels? A. Yes.

Q. You said if he had a passport or any other evidence to show he was a citizen he would exhibit it to the immigration inspector? A. That is right.

Q. What other kind of evidence would there be? A. He may carry a birth certificate, naturalization certificate, anything of that kind. Anything to satisfy the inspector that he really is an American citizen and entitled to be landed as such.

366

Q. Anything of that kind to show that he is a citizen is presented to the inspector? A. I wouldn't say anything, Counselor; any satisfactory proof.

Q. Anything that is satisfactory proof to the inspector? A. That is true.

Q. And a birth certificate in many instances would be satisfactory proof? A. Yes, that would satisfy me.

Q. And a naturalization certificate? A. Yes, if the person should prove he was the rightful owner of that birth certificate or naturalization certificate.

Q. And a passport would be the same kind of evidence? A. Yes.

Mr. Battle: That is all.

Mr. Dunigan: That is all.

Louis Schneittacher—For Government—Direct.

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LOUIS SCHNEITTACHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunigan:

Q. Mr. Schneittacher, what is your occupation? A. Inspector of customs.

Q. And how long have you been a customs inspector? A. About 30 years.

Q. I show you this paper—it is marked Government's Exhibit 11 in evidence,—and ask you if you have seen that paper before? A. Yes, I have.

368

Q. Will you tell the Court and the jury what it is. A. It is a customs declaration, a declaration of any passenger arriving from Europe or any foreign port.

Q. Can you tell from the declaration itself the name of the passenger? A. Yes.

Q. What is the name? A. Earl Browder.

Q. Can you tell from examining the customs declaration the date of the arrival of the passenger? A. Yes, April 30, 1937.

Q. On what boat? A. The Berengaria.

369

Q. Will you tell us, Mr. Schneittacher, the procedure that you followed in examining incoming passengers' baggage. A. Well, we receive the declaration from the staff desk which is presented to us by the staff officer after the passenger hands in his coupon which has a number that corresponds to the passport number and when we receive the declaration we ask if all his baggage has been declared. That is the first question. Then we ask if this contains everything they purchased or obtained abroad and then we ask him to acknowledge the signature.

Q. What is the signature appearing on that particular declaration? A. Earl Browder.

Q. And you asked him if that was his signature? A. Yes, sir.

370

George S. German—For Government—Direct.

Q. Can you tell from looking at the paper itself what he said in answer to that question? A. Well, he acknowledged his signature.

Q. I direct your attention, Mr. Schneittacher, to the writing in parenthesis "for. Lang." Can you tell us whose handwriting that is? A. That is my handwriting.

371

Q. Would you explain to the Court and jury what that writing means. A. That means that he has an item here of a collection of books for \$50, foreign language books. Books in a foreign language are free of duty, and I made a notation alongside of it which indicates that those books are in a foreign language. "For. lang." means foreign language according to my notes.

Q. Mr. Schneittacher, approximately how many passengers' baggage do you examine in the course of a year? A. Well, that is pretty hard to say.

Q. A great number? A. Oh, very many.

Q. Do you have any independent recollection of this particular examination other than the paper itself? A. No, I can't recall anything particularly about this declaration.

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Mr. Dunigan: That is all.

Mr. Battle: No cross-examination.

Mr. Dunigan: Mr. German.

GEORGE S. GERMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunigan:

Q. Mr. German, what is your occupation? A. Immigrant inspector.

Q. How long have you been an immigrant inspector? A. Since January, 1930.

George S. German—For Government—Direct.

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Q. Would you explain to the Court and jury the duties of an immigrant inspector, briefly. A. It is the examination, or my part of it consists of the examination of persons seeking to enter the United States to determine whether or not they are citizens, and if they are aliens, to determine their admissibility.

Q. You mean by that that you meet incoming passenger ships? A. I do, sir.

Q. Where do you first board an incoming passenger vessel, Mr. German? A. Usually in the Narrows, off Quarantine, and sometimes beyond that at Gravesend Bay.

374

Q. Are you among the first group that boards the vessel? A. We are the first group to board the vessel, sir.

Q. I show you a manifest of the SS. Aquitania. It is marked Government's Exhibit 10 in evidence; and I direct your attention to this particular page and ask you to examine it and state if you find the name of Earl Russell Browder or Earl Browder appearing on that page? A. Such a name is on line 1.

Q. Can you tell from examining the manifest the date of arrival of the SS. Aquitania? A. On February 15, 1938.

Q. At the port of New York? A. At New York.

375

Q. I call your attention to the writing "George S. German" appearing at the bottom of the entries and ask you if you recognize the handwriting? A. That is my signature.

Q. And from that signature can you tell us whether or not you checked off all of the names set forth on that particular page? A. I can so state.

Q. I show you a passport marked Government's Exhibit 5 in evidence, and direct your attention to the stamp reading "Immigration and Naturalization Service, Department of Labor, Arrived February 15, 1938," and ask you if you can tell us who placed that stamp on that passport? A. That is the stamp I placed on the passport.

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George S. German—For Government—Direct.

Mr. Battle: I make the same objection to this line of testimony and ask that the objection go to the same line.

The Court: The same ruling.

Mr. Battle: My exception.

Q. Would you tell us briefly, Mr. German, the procedure that you employ in checking off passengers on an incoming passenger boat. A. Passengers are gathered in a convenient place, usually the smokers room or lounge, and these manifests are spread before us on a table. The passengers are required to pass by this table and present whatever evidence they have of admissibility to the United States. In the case of citizens there is a landing card and a passport or some other means of identification to enable him to enter the United States.

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Q. When a passport is presented to you by a passenger do you compare that passport in any way with the individual who presented it? A. The picture is glanced at and a question is asked the person who presents it, and at that time a glance is taken to the person. There is a comparison made.

378

Q. You told us that you obtained from the incoming passenger some evidence of his right to enter this country. A. Yes, sir.

Q. Is that right? A. That is correct.

Q. Is a passport one of the methods used to establish the right of the passenger to enter this country?

Mr. Battle: I object to that, sir, calling for a conclusion on a question of law.

The Court: Overruled.

Mr. Battle: Exception.

Q. What is your answer, Mr. German? A. A United States passport is the most acceptable of evidence of citizenship of the United States to us as immigrant inspectors.

George S. German—For Government—Direct.

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Q. And you can tell from examining the passport before you, Government's Exhibit 5, whether or not Mr. Browder on this occasion used that passport in establishing his citizenship?

Mr. Battle: I object to that as calling for a conclusion, and he should ask him what he did.

The Court: What is your recollection? What can you say after looking at the passport as to what he did?

Mr. Dunigan: May I change the question?

380

Q. Did Mr. Browder present that passport to you on February 15, 1938? A. I am able to state that he did.

Q. At the port of New York? A. Yes, sir.

Q. On February 15, 1938, do you recall, Mr. German, Mr. Browder's having presented that passport to you? A. I do recall that.

Q. Will you tell the Court and jury the circumstances of the occasion. A. Because of the confusion occasioned by the additional newspaper men and photographers. There was more confusion than usually in the examination room, which was held in the lounge or the smokeroom of the Aquitania.

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Q. And it is because of those facts that you recall the incident now, is that correct? A. Yes, and in addition the additional persons who were permitted to ride the cutter down the bay who are not the usual staff of photographers and newspaper writers.

By the Court:

Q. How did you know that? A. What is that, sir?

Q. How did you know that? A. They are continually the same or very nearly the same men who come down for that work.

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George S. German—For Government—Cross.

Q. These photographers looked different to you? A. Yes.

Q. In what way were they different? A. They were new faces.

Q. Were they pleasant faces? A. Agreeable, sir.

Mr. Dunigan: That is all, Mr. German. Thank you very much.

383

Cross Examination by Mr. Battle:

Q. Mr. German, you spoke of the other means of identification? A. Yes, sir.

Q. In addition to the passport. Just mention some of them. A. A naturalization certificate or a birth certificate, if you are able to establish that it is a bona fide birth certificate and you are the rightful owner of it.

Q. Any evidence that would satisfy the inspector of citizenship is what you were looking for? A. Yes, sir.

384

Q. And when Mr. Browder came in on this occasion there was no secrecy about his arrival? A. Oh, no. We knew he was coming on that ship because of conversations with newspaper men on the trip down the bay.

Q. You knew he was coming because there were people down there to welcome him? A. That is correct.

Mr. Battle: Thank you. That is all.

Mr. Dunigan: That is all. Mr. Stevenson.

Lawrence Stevenson—For Government—Direct.

385

LAWRENCE STEVENSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunigan:

Q. Mr. Stevenson, what is your occupation? A. Inspector of Customs, Port of New York.

Q. How long have you been in the customs service? A. Since August 1, 1935.

Q. Prior to that what was your occupation? A. I was a post office clerk in 1933.

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Q. Tell us briefly; Mr. Stevenson, your duties as a customs inspector. A. Well, to examine baggage of incoming passengers from foreign countries, engage dutiable commodities, count passengers on excursion boats, and so forth.

Q. I show you Government's Exhibit 12 in evidence, and ask you if you have seen this paper before? A. Yes, I recognize that. That is the declaration I acted upon on February 15—

Q. On what date? A. On February 15, 1938.

Q. I call your attention to the writing in the lower left-hand corner in pencil. Do you recognize that writing? A. Yes, that is my writing.

387

Q. And can you tell from that writing the date of the arrival of the SS Aquitania? A. Yes, February 15, 1938.

Q. And the baggage declaration is in the name of what person? A. Earl Browder—Earl R. Browder.

Q. Do you recall the incident of the examination of Mr. Browder's baggage on the date that you have just mentioned, February 15, 1938? A. Yes, I do. There was quite a furore engendered by Mr. Browder's arrival. There was a number of press photographers there and a number of reporters.

Q. Will you tell the Court and jury, Mr. Stevenson, what conversations you had with Mr. Browder concerning his

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Lawrence Stevenson—For Government—Cross.

baggage declaration, or those that you recall? A: Well, in baggage procedure it is necessary for the inspector to ask to have the passenger acknowledge his signature.

Q. And did you do so in this particular case? A. I did.

Q. Anything else? A. Well, it is also necessary to ask him whether he had declared everything brought back from abroad whether by purchase or otherwise, and I asked that question.

Q. Now, can you tell from the exhibit that you have—it is Government's Exhibit 11, is it? A. Exhibit 12.

389 Q. Exhibit 12—the date that you examined Mr. Browder's baggage? A. February 15, 1938.

Q. Is it customary to examine the passenger's baggage on the date of the arrival of the ship? A. It usually is, unless the passenger is held over by the immigration or for some other reason he is held as a hold-over passenger, as we call him.

Q. And you did examine Mr. Browder's baggage on this occasion on the date of the arrival of the vessel? A. I did.

Mr. Dunigan: That is all. Thank you, Mr. Stevenson.

390

Cross Examination by Mr. Battle:

Q. Did you examine the articles that are filled out on the application? A. I did, sir.

Q. Do you remember examining the number of chessmen? A. I saw a box. I didn't look into it.

Q. And two bottles of eau de cologne? Did you examine them? A. Yes.

Q. And toys? A. Yes.

Q. Was Mr. Browder's family down there to meet him? Wife and children? A. I don't know what the relationship

Kinard D. Abbott—For Government—Direct.

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may have been. There were quite a few people there to greet him.

Q. You don't know whether his wife and children were there or not? A: I do not.

Mr. Battle: That is all.

Mr. Dunigan: That is all.

Mr. Werner: Mr. Abbott.

KINARD D. ABBOTT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

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Direct Examination by Mr. Werner:

Q. Mr. Abbott, what is your occupation? A. Naturalization examiner.

Q. What are the duties of a naturalization examiner? A. Well, to examine applicants for citizenship and to make investigations in connection with that and to make and preserve records and various other things.

Q. Mr. Abbott, can you tell us briefly the procedure with respect to an alien making an application for citizenship? A. Well, he submits an application and makes a declaration of intention and at some time after that has become two years old and he has completed the necessary residence, he then submits an application for a petition for citizenship which is filed in the court and he later comes before the court for a final hearing and his petition is acted on. He is admitted or denied.

393

Q. When an applicant makes a petition for naturalization is a duplicate of that petition kept in the files of the Department of Labor? A. It is. The original is retained by the clerk of the court and filed in his office. The

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Nicholas Dozenberg—For Government—Direct.

duplicate is sent to the Commission of Immigration and Naturalization in Washington.

Q. That is not a copy; it is a duplicate original. A. It is a duplicate made in one operation with a carbon.

Q. And when a certificate of naturalization is issued to an individual is a duplicate original of that certificate of naturalization kept by the Department? A. It is.

(Papers marked Government's Exhibits 13 and 14 for identification.)

395

Q. I show you Government's Exhibit 13 for identification and ask you if that is a petition for naturalization from the files of the Department of Labor? A. Yes, sir.

Q. Such as you have referred to? A. Yes.

Q. And I show you Government's Exhibit 14 for identification and ask you if that is a duplicate original certificate of naturalization from the files of the Department of Labor? A. Yes, sir.

Q. And was Government's Exhibit 14 for identification a certificate issued on the petition Government's Exhibit 13 for identification? A. Yes, sir.

396

Mr. Werner: Thank you.

Mr. Battle: No questions.

NICHOLAS DOZENBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Dozenberg, you have pleaded guilty to an indictment charging you with use of a passport secured by an

Nicholas Dozenberg—For Government—Direct.

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application containing false statements? A. That is part of the indictment.

Mr. Battle: I object, and may I state the grounds of my objection to the testimony offered by this witness. I don't want to repeat unnecessarily, so I shall state all the grounds, and then if your Honor gives me a ruling it will cover subsequent proceedings. I object to any testimony given by this witness here on the ground that it is entirely immaterial and irrelevant; that it appears from the allegations in the indictment as already developed in this case that the application filed in the name of Nicholas Dozenberg was back in 1921, long prior to the Richards application, which is the passport which was the last previous passport before the present passport, the Browder passport. On that ground and upon the further ground that in every respect this testimony is entirely incompetent, immaterial and irrelevant; that it is too remote, it has no bearing on the issues that this jury is to try; I think it is highly prejudicial to the defendant, and I object to his being called as a witness. I object to any testimony he may give in this case on those grounds.

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The Court: I will overrule your objections for the reasons that I have already given, when the motion was made before the start of the trial.

Mr. Battle: Exception. Will your Honor give me an exception to this whole line of testimony?

399

The Court: Yes. You won't have to repeat your objections. You have an exception.

Q. Mr. Dozenberg, I will reframe that question. Have you pleaded guilty in this court to an indictment charging you with the use of passports obtained upon applications containing false statements? A. Yes.

400

Nicholas Dozenberg—For Government—Direct.

Q. I show you Government's Exhibit 14 for identification and ask you if that is your signature on the line "Signature of holder"? A. Yes.

Q. And I show you Government's Exhibit 13 for identification and ask you if that is your signature on the line "Complete and true signature of petitioner"? A. Would you mind to explain what kind of document that is?

Q. Will you answer the question, Mr. Dozenberg? A. That signature is mine.

401 Q. And in both places where it appears above the line, "Complete and true signature of petitioner" it is your signature? A. Yes.

Q. Now, I show you Government's Exhibit 4 for identification and call your attention to a page with number 2990 on the top of it, and call your attention to the reverse of that page and ask you if you know whose picture appears on that? A. I would say that that picture appears to be Browder's picture.

Q. Mr. Earl Russell Browder? A. Earl Browder. Russell was not known to me.

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Mr. Werner: I offer Government's Exhibit 4 for identification in evidence.

Mr. Battle: Same objection, on the same grounds.

The Court: What is this?

Mr. Werner: It is a passport application in the name of Nicholas Dozenberg, with a picture of Earl Browder—

The Court: I make the same ruling. Overrule the objection and give you an exception.

(Government's Exhibit 4 for identification received in evidence.)

Q. Now, Mr. Dozenberg, will you look at both sides of this application for passport and tell me if any of it is your handwriting?

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Mr. Battle: Is that the document just in evidence.

Mr. Werner: Government's Exhibit 4.

A. I would say that it is not in my handwriting.

Q. Did you make that application for passport? A. I did not.

Q. Now I call your attention to the fact that the application reads as follows: "I, Nicholas Dozenberg, a naturalized and loyal citizen of the United States, hereby apply to the Department of State at Washington for a passport. I solemnly swear that I was born at Riga, Russia, now Latvia." Is that where you were born? A. Correct.

404

Q. "On November 15, 1882." Is that when you were born? A. Yes.

Q. "That I emigrated to the United States, sailing from Stockholm." Is that where you sailed from? A. That is not where I sailed from.

Q. Where did you sail from? A. I sailed from Wilno.

Q. Well, did you sail about June 1904? A. I did.

Q. "That I resided 16 years uninterruptedly in the United States from 1904 to 1921." Is that correct, as applied to you? A. I am not in a position to say in all details whether that would exactly correspond with the record or not, but obviously it is.

405

Q. Is that your best recollection? A. That is the best of my recollection.

Q. "At Boston"—

Mr. Battle: There is another objection to this line of testimony here and that is this: the witness has already testified he did not make the application, so that I do not see that it is relevant or material or competent.

Mr. Werner: I am simply showing that the man who did make the application knew the correct facts about Mr. Dozenberg.

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Nicholas Dozenberg—For Government—Direct.

Mr. Battle: This man says he knows nothing about it.

The Court: He is negating what is stated in the application.

Mr. Battle: This witness testified he didn't make the application. That is why I don't see how he can be examined on that application.

The Court: On what ground?

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Mr. Battle: I object to it on the ground that he has already testified that he did not make the application and has no knowledge of it.

The Court: It purports to be made by him.

Mr. Battle: It has his name on it, yes, sir.

The Court: I will permit the testimony. You may have an exception.

Mr. Battle: I except.

Q. "That I resided 16 years uninterruptedly in the United States from 1904 to 1921 at Boston, Massachusetts, and New York, N. Y." Is that where you resided during that period? A. To the best of my recollection that is where I resided.

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Q. "That I was naturalized a citizen of the United States before the District Court of the United States at Boston, Massachusetts." I show you Government's Exhibit 14 for identification, a naturalization certificate you have identified, and ask you if with that exhibit before you, 14, you can say that the statement appearing on the application, Exhibit 4, is correct and concerns Nicholas Dozenberg? A. It is correct except for Stockholm.

Q. Except for Stockholm? A. Yes.

Mr. Werner: I offer Government's Exhibit 14 for identification and Government's Exhibit 13 for identification, in evidence.

Mr. Battle: I make the same objection, if your Honor please.

Nicholas Dozenberg—For Government—Direct.

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The Court: The same ruling.

Mr. Battle: Irrelevant and on all the grounds I mentioned before.

The Court: The same ruling.

(Government's Exhibits 13 and 14 for identification received in evidence.)

Q. "That I have resided outside the United States since my naturalization at the following places for the following periods." In 1921 had you resided anywhere outside the United States for any period? A. No.

410

Q. "My permanent residence being at 1309 Tremont Roxbury, Boston, in the State of"—

Mr. Battle: This is all taken subject to my objection.

The Court: Of course.

Mr. Battle: Exception.

Q. "My permanent residence being at 1309 Tremont Roxbury, Boston, in the State of Massachusetts." Was that where you were living about that time? A. I am not in a position at this time to say whether that is exactly the number, but I submit that it could have been.

411

Q. Was that about where you were living at that time?

A. It was nearly on the corner of Columbus and Tremont Streets.

Q. In Boston? A. In Roxbury, Boston, Massachusetts. It may have been that number.

Q. "Where I followed the occupation of machinist?" A. Correct.

Q. "That I am about to go abroad temporarily and intend to return to the United States within three months." In 1921, were you about to go abroad? A. I was not.

Q. "I intend to leave the United States from the port of New York, and sail on board the Hellig Olaf, March 17,

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Nicholas Dozenberg—For Government—Direct.

1921." Did you intend to leave the United States? A. I had never had such intentions at that time.

Q. I call your attention to the signature. It says, "Signature of applicant, Nicholas Dozenberg." I ask you if that is your signature? A. In some respects it is, but in its totality it is not.

Q. Did you write the signature, "Nicholas Dozenberg" on Government's Exhibit 4 in evidence? A. I would say that I did not.

413

Q. Now I call your attention to the affidavit of the identifying witness: "I, Katherine Dozenberg, solemnly swear that I am a naturalized citizen of the United States." Were you married in 1921? A. I was.

Q. To whom? A. To Katherine Dozenberg.

Q. And is she still alive? A. She is not.

Q. Do you know when and where she died? A. She died on January 1, 1936, in Tientsin, China.

Q. "That I reside at 1309 Tremont Street, Roxbury, Boston." Was she living with you about that time? A. She was.

414

Q. Mr. Dozenberg, in the 1920's did you see Mr. Browder from time to time? A. I do not remember distinctively so, but it could have been that I met him.

Q. Well, did you see him from time to time? A. My recollection does not bring me to any specific time or place that I could say that I met him then and there, but considering the work I was doing—

Mr. Battle: I object.

A. (Continuing) At that time it could have been possible.

Mr. Battle: I object to any statement of that nature from the witness.

The Court: Yes, strike it out. What is your best recollection, Mr. Dozenberg?

Nicholas Dozenberg—For Government—Direct.

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The Witness: I have no recollection definite, your Honor, on that score.

The Court: Well, when you say definite—I am not trying to pin you down to any particular place or street corner on a particular day and hour, but in general, what can you say with respect to seeing him?

The Witness: In general I would say it could have been, I have met Mr. Browder.

Q. Now, will you just answer the question. Did you see him from time to time?

416

Mr. Battle: I object to it on the ground the witness has already said—

The Court: No, I don't think he has answered it; not very satisfactorily.

Q. Did you see him from time to time?

Mr. Battle: I object.

The Court: Overruled.

Mr. Battle: Exception.

The Witness: Your Honor, there is no question that I had seen the defendant.

417

The Court: Well, why don't you just say yes or no.

The Witness: If I am asked the question whether at that time I had seen him, I am not in a position—

The Court: It is from 1920, as I remember the question.

Q. Did you see him from time to time in the 1920's? A. I can't repeat what I said before?

Q. Please answer the question, if you know. A. I don't know.

418

Nicholas Dozenberg—For Government—Direct.

Q. Over what period of time did you see Mr. Browder?

A. I should say after 1924.

Q. Yes. A. Up to about 1929 or 1930.

Q. Did you see him from time to time during that period? A. From time to time during that period.

Q. And did he look as he looks in Exhibit 4, the passport application, in the name of Dozenberg, the early time you met him? A. Unless he has a twin brother or a double, I would say he does.

419 Q. Now, in 1921, Mr. Dozenberg, did you go abroad on the S. S. Hellig Olaf? A. I did not.

Q. In 1921, did you go down to the passport agency? A. I did not.

Q. Any passport agency? A. I did not.

Q. I show you Government's Exhibit 14 in evidence, the naturalization certificate in your name, in which your signature appears, and ask you if you had the original of that certificate in your possession at the time it was issued?

A. At that time, yes, and after that time.

420 Q. And was there a period of time when you did not have it in your possession? A. Would you mind to make clear what do you mean by "in possession". On your person?

Q. In your possession or anyone else's possession. A. On your person or in your house?

Q. In your house or on your person? Both. A. What was the question again?

Q. Did there come a time in 1920, early 1920, when you did not have the original naturalization certificate in your possession? A. I do not correct—I do not recollect not having it in my possession either in the house or on my person.

Q. Did there come a time when you looked for that naturalization certificate? A. Yes.

Q. Did you find it? A. But that was considerably later. That was to the best of my recollection 1924.

Nicholas Dozenberg—For Government—Cross.

421

Q. And in 1924 you couldn't find it? A. I couldn't find it.

Q. When, if you recall, Mr. Dozenberg, was the first time that you saw Mr. Browder? About what date? A. I can not say. I do not remember it.

Q. What is your best recollection? A. You are placing me in a position—

Q. No. Will you please answer the question and we will get along much better. A. I answered the question to the best of my conviction, my belief and knowledge. I cannot specify any date. I have no recollection of any specific date or year when it could have been the first time I met Mr. Browder.

422

Q. Except some time in the '20's? A. Yes.

Q. Did you ever have any conversation with your wife Katherine about the loss of your naturalization certificate?

Mr. Battle: I certainly object to that, your Honor.

The Court: Objection sustained.

Mr. Werner: I don't ask for the conversation, your Honor.

The Court: I understand.

(Short recess.)

423

Q. One more question, Mr. Dozenberg. Did you ever obtain a passport made upon application, Government's Exhibit 4, which I show you? A. No.

Cross Examination by Mr. Battle:

Q. You testified that you had pleaded guilty to an indictment against you? A. Yes.

Q. And when was your case set down for sentence? A. I understood that it was supposed to be yesterday.

Q. And what happened when it was set down for sentence yesterday? A. I am not competent to say what happened because the whole matter was left to my attorney.

424

Nicholas Dozenberg—For Government—Re-direct.

Q. And was the sentence postponed? A. I just read in the newspaper that it had been postponed.

Q. You knew you were on for sentence yesterday and you were not sentenced, were you? A. That was my understanding, that I was supposed to be sentenced yesterday and now yesterday I learned to know that I will not be, because I wasn't.

Mr. Battle: That is all.

425

Re-direct Examination by Mr. Werner:

Q. Mr. Dozenberg, has anybody made any threats or promises to you? A. It has been emphasized that no promises will be made or are not being made.

The Court: Who emphasized it?

The Witness: Whoever questioned me.

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IRA FORD HOYT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. What is your occupation, Mr. Hoyt? A. Passport agent.

Q. And how long have you been in that position? A. About 21 years.

Q. What are your duties as passport agent? A. To operate the passport agency in the Sub-Treasury Building in Wall Street and supervise the branch office at Rockefeller Center.

Q. Are you presently in charge of the passport agency in New York? A. Yes.

Ira Ford Hoyt—For Government—Direct.

427

Q. Was there a time, Mr. Hoyt, that a man named Philip H. Ahrens was passport agent in New York? A. No. He was agent of the Department of State.

Q. As agent of the Department of State was he qualified and authorized to have applications for passports executed before him? A. Yes, sir.

Q. Are you familiar with his handwriting? A. I am, sir.

Q. Is Mr. Ahrens still alive? A. No.

Q. I show you Government's Exhibit 4, a passport application in the name of Nicholas Dozenberg, and I ask you whether you recognize the handwriting of the agent of the Department of State? 428

Mr. Battle: I make the same objection.

The Court: The same ruling.

A. Yes, I do.

Mr. Battle: Exception.

Q. Whose handwriting is it? A. Mr. Ahrens.

Q. From looking at Government's Exhibit 4, can you state that the passport application was executed before him? A. Yes. 429

Q. You can so state? A. Yes.

Q. Will you look at Government's Exhibit 4 and state if you can where that passport was delivered, if a passport was issued on that application?

Mr. Battle: You mean so far as it appears from the record?

Mr. Werner: Yes.

Q. First I will ask you, can you state whether a passport was issued upon that application? A. Yes, there was a passport issued.

430

Ira Ford Hoyt—For Government—Direct.

The Court: What is the number of that application?

Mr. Werner: 2990. Government's Exhibit 4.

Q. Can you state where that passport was sent? A. It was sent to the passport agency then located in the Custom House.

Q. What city? A. New York City.

Q. When passports are sent to the passport agency in New York City, is a record kept by you of the passports which are received? A. Yes.

431

(Paper marked Government's Exhibit 15 for identification.)

Q. I show you Government's Exhibit 15 for identification and ask you if that is such a record? A. It is a record of the passports received in 1921.

Q. Will you examine Government's Exhibit 15 for identification and state if you can, whether or not that record reflects the receipt of a passport issued upon the application, Government's Exhibit 4 in evidence?

432

Mr. Battle: I object to that, your Honor. It calls for the contents of an instrument not in evidence.

Mr. Werner: I offer Government's Exhibit 15 for identification in evidence. Any objection?

Mr. Battle: Same objection to all this line of testimony.

The Court: Yes. Same ruling.

(Marked Government's Exhibit 15 in evidence.)

Q. Will you examine Government's Exhibit 15 in evidence Mr. Hoyt and state if you can whether that reflects the arrival at the Passport Agency of New York of the passport issued on the application, Government's Exhibit

Ira Ford Hoyt—For Government—Direct.

433

4, in the name of Nicholas Dozenberg? A. It was received there on the morning of March 13, 1921.

Q. Now, in 1921, Mr. Hoyt, were records kept concerning the delivery of passports? A. There weren't.

Q. To the applicant? A. No.

Q. To whom were passports delivered when they are sent to the Passport Agency? A. To the applicant in person or upon his written request, to another.

Q. And if the applicant comes in do you compare the picture on the passport with his appearance? A. Always.

Q. And if the applicant sends in a written request, do you compare the writing on the written request with his signature on the passport? A. We compare the signature on the written request with the signature on the passport.

434

Q. Have you any record of which you did in this case? A. No, sir.

Q. Was that passport called for? A. Yes.

Q. On what do you base that statement? A. That there is no record in the office of it being returned to Washington.

Q. For how long did you keep passports in the office before they are returned to Washington? A. Three months.

Q. And if they haven't been called for in three months then you return them to Washington? A. That is correct.

435

Mr. Werner: Thank you.

Mr. Battle: No questions. I move to strike out the testimony on the same grounds as previously urged.

The Court: Denied.

436

John O. Bell—For Government—Recalled, direct.

JOHN O. BELL, recalled, testified further as follows:

Direct Examination Continued by Mr. Werner:

Q. Mr. Bell, will you examine a passport application in the name of Nicholas Dozenberg, Government's Exhibit 4, before you, and tell his Honor and the jury what the markings on that application indicate in the same manner as you did on that Browder passport—

437

Mr. Battle: Same objection.

Q. (Continuing) application Government's Exhibit 2 in evidence.

Mr. Battle: We make the same objection, if your Honor please.

The Court: The same ruling.

Mr. Battle: On the same ground stated before. I respectfully except.

438

A. Well, the number appearing in the upper right hand corner of the application, 2990, is the number placed on the passport. The stamp immediately below that, Department of State, passport issued March 12, 1921, Washington, indicates that the passport was issued at Washington on that date. There is another stamp below that, and partly underneath it, which reads "Not to be amended without" I think the word is "express authorization of the Department of State."

There is also in that stamp some other language which has been marked out with a red pencil. This stamp indicates that a similar stamp was placed in the passport when issued; that was a limitation on the validity of the passport in accordance with certain wartime regulations which were then in effect. There is a name in blue crayon pen-

John O. Bell—For Government—Recalled, direct.

439

cil in the middle of the application, E. Robinette. That is the name of what is known as a junior examiner or person who assists in the examination of applications but does not have final authority to approve. Her name being placed on the application indicates that it appeared correct to her, and it was then submitted to a senior examiner whose name appears right beside hers. Then in red marks above her name is the date, 3/12. The name there is Covel. That is the name of the senior examiner who gave final approval to the application. 3/12 is the date it was done. On the side of the application is a stamp which says "Certificate of naturalization seen"— 440

Q. What does that indicate, Mr. Bell? A. That indicates that a certificate of naturalization was submitted at the passport agency when the application was executed.

Q. Can you tell us in whose name that certificate of naturalization was? A. The naturalization certificate was then certified in the name of Nicholas Dozenberg, establishing his naturalization on the date and place mentioned in the application.

Q. Would the facts in that naturalization certificate have to conform to the facts as stated in the passport application, Government's Exhibit 4, before the naturalization certificate would be accepted as proof of citizenship? A. Yes. 441

Q. When a naturalization certificate is presented as proof of citizenship, is that sent down to Washington or is that returned to the applicant when he makes his application and appears at the agency? A. If an application is executed at an agency, the certificate ordinarily would be returned to the applicant and not forwarded to Washington, if it agrees with the information in the application.

Q. Can you tell in this case whether the certificate was forwarded to Washington or returned to the applicant? A. I can tell it wasn't sent to Washington by the fact

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John O. Bell—For Government—Recalled, direct.

that there appears right beside and in between the wording of this stamp the notation "Not," and then the abbreviated "att." meaning not attached, and also the initials beside that notation of the person who made it.

443

Q. Will you proceed with the markings? A. There is a red crayon marking down here in the space provided for the list of countries to be visited. It is to obliterate the names of towns which were put in the application erroneously. The space says "List countries," and they have put down the towns as well. Those were marked out. Then in addition there are some blue crayon markings on which the words—names of other countries; those are countries he would have had to visit en route in order to reach the particular country. The passport at that time stated in it specifically the countries for which it was valid. That is different from the present day passports which say "Valid for all travel in all countries unless otherwise limited."

444

There is also a word here in the space that had been filled out by the applicant, stating the purpose of his trip, and part of that has been marked over and changed by the examiner in blue pencil for the purpose of indicating to the person who wrote the passport what should be stated therein. That is just a change in language to comply with the usual procedure in writing the passport. Here is a stamp down at the bottom, the right hand side, "Fee received March 11, 1921," and a number, 4776, indicating that the passport fee was submitted and properly noted in the accounting record. On the back of the application there is a notation or—I don't know whether you would call it a notation, but there is a space provided for the applicant to indicate where he wants the passport sent, and the original entry by the applicant was changed; instead of sending it to the address he originally wanted it sent, he decided he wanted it sent to the passport agency,

John O. Bell—For Government—Recalled, cross.

445

and a notation was made there to send it to the passport agency, Custom House, New York.

Q. When the passport was issued on that application, Mr. Bell, did it contain a duplicate of the picture appearing on Government's Exhibit 4 in evidence? A. Yes.

Q. And in the name of Nicholas Dozenberg? A. Yes, the passport was in the name of Nicholas Dozenberg.

Mr. Werner: Thank you.

Cross Examination by Mr. Battle:

446

Q. Mr. Bell, you don't know anything about these matters about which you have been testifying personally? You had no personal contact? A. I wasn't there in 1921.

Q. All that you were testifying about is the general procedure that is followed, and explaining these notations from your knowledge of the general procedure, and you are not testifying to any particular facts in this particular case? A. I was not personally present.

Mr. Battle: That is all.

Mr. Werner: With your Honor's permission I would like to read Government's Exhibit 14 to the jury, the naturalization certificate.

The Court: Yes.

(Mr. Werner read naturalization certificate to the jury, Government's Exhibit 14.)

Mr. Dunigan: Bring in Mr. Powers.

447

448

George E. Powers—For Government—Direct..

GEORGE E. POWERS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Dunigan: Mark these, please.
(Marked Government's Exhibits 16 and 16-A for identification.)

Direct Examination by Mr. Dunigan:

449

Q. What is your present occupation? A. Well, I am unemployed at the present time.

Q. How long have you been unemployed? A. Since last summer, since July.

Q. 1939? A. Yes.

Q. Prior to July, 1939, what was your occupation? A. I was employed by the International Workers Order.

Mr. Battle: By whom?

Mr. Dunigan: International Workers Order.

Q. Do you know the defendant in this case, Earl Russell Browder? A. I do.

450

Q. How long have you known the defendant Browder? A. Well, I have known him, roughly speaking, since he was general secretary of the Communist Party.

Q. Of the what? A. I have known of him, roughly speaking, since about the time that he became general secretary of the Communist Party.

Q. Do you know the date or the approximate date when he did become general secretary of the Communist Party? A. I couldn't name the exact date.

Q. Give us your best recollection. A. Somewhere in 1930 or 1931.

Q. And during the period since 1930 or '31 have you seen the defendant Browder from time to time? A. I have seen him at mass meetings.

George E. Powers—For Government—Direct.

451

Q. Yes. A. And I might see him passing along the street. Various occasions like that. I might say that I have had no dealings with him—no personal or organizational dealings, business dealings, or anything of that sort.

Q. I show you Government's Exhibit 16 for identification, and direct your attention to the reverse side of the paper and to the writing that I have indicated to you. Do you recognize that handwriting?

Mr. Battle: Now, if your Honor please, I wish to make this general objection to all this witness's testimony to avoid repetition. I object to it on the ground that it relates to a passport that was issued prior to the Richards' passport, which is conceded to be the last passport before the Browder passport; that it is incompetent, immaterial and irrelevant; that it is too remote; that it is not at all within the issues of this case, and that it is highly prejudicial to the defendant, and generally incompetent.

452

The Court: Overruled.

Mr. Battle: Exception.

Q. What is your answer to the question, Mr. Powers?

453

Mr. Battle: I will not repeat the objection to this line of testimony.

The Court: Quite right. It is understood that you have an objection and exception to all this testimony.

Q. Did you understand the last question? A. Yes.

Q. What is your answer? A. Well, it resembles my handwriting so closely that I could almost be sure of it, but I have no clear recollection of the occasion on which it was written.

Q. What is that? A. I have no clear recollection of the details surrounding the occasion when it was written, but,

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George E. Powers—For Government—Direct.

obviously, it so closely resembles my handwriting that I practically could agree that it is.

Q. Would you say, Mr. Powers, that it is your handwriting? A. Well, as near as I could recollect or understand, I believe it is.

Q. You believe that it is your handwriting? A. I do.

Q. Now, I call your attention to the photograph appearing on Government's Exhibit 16 for identification, and ask you if you recognize that photograph? A. Well, it resembles Earl Browder, but it does not look exactly as he does today.

455

Q. As you know the defendant Browder, and as you knew him in 1930, would you say that that is a photograph of the defendant Browder? A. I would say it might be. There is a very good possibility.

Q. Well, is it? A. As I say, according to the best recollection I might have, I think it might be.

Q. Well, is it a photograph or a picture of the defendant Browder, Mr. Powers, as you knew him and as you know him now? A. Well, I think it is.

456

Mr. Dunigan: I will offer Government's Exhibit 16 for identification in evidence.

Mr. Battle: The same objection on the same ground as the objection to this general line of testimony.

The Court: The same ruling.

Mr. Battle: And may the objection apply particularly to this paper offered in evidence; and I ask that the objection continue in force.

The Court: Is that the original application?

Mr. Dunigan: Yes, it is, your Honor.

The Court: For the Morris passport?

Mr. Dunigan: Morris, yes.

The Court: What is the date of it?

George E. Powers—For Government—Direct.

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Mr. Dunigan: The date is November 17, 1927.

The Court: November what?

Mr. Dunigan: November 17, 1927, is the date that the application was sworn to by the applicant.

(Government's Exhibit 16 for identification received in evidence.)

Mr. Battle: Exception to your Honor's ruling.

The Court: Of course.

(Mr. Dunigan read Government's Exhibit 16 to the jury.)

458

Q. Mr. Powers, you will recall that that passport application was executed in November, 1927. Do you have any recollection now of having gone to the Passport Agency in New York City and swearing as an identifying witness on the application? A. First of all, you didn't let me answer the first question you put to me.

Unless I had looked at that document I would not know not even the month or the year on which it was executed. I couldn't recollect it of my memory. But I assume it is so. So far as the recollection of the place is concerned, I can honestly tell you that since that took place over twelve years ago I haven't got the faintest recollection with assurance to state in what building or place—obviously some place in New York City—that the transaction took place.

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Q. Well, do you recall having any conversations with any person concerning this particular application? A. Can't recall any conversation—any details of any conversation.

By the Court:

Q. Well, do you recall anything about being an identifying witness for any passport at or about this time? A. Well, I can recall to the extent that there must have been

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George E. Powers—For Government—Direct.

my presence at some place with such a person, but so far as the details—

Q. Well, what is your recollection of that? A. I haven't got a clear recollection at all of it.

Q. Do you recall ever having been an identifying witness on an application for a passport in any case? A. In this particular instance—

Q. I am not saying about this one. In any? In other words, were you in the habit of acting as an identifying witness on applications for passports? A. No.

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Q. Can you remember any one time or any two times when you did act as an identifying witness? A. As I stated, I can't recollect the details of it.

Q. Nobody is asking you to over this long period of time. A. That is right.

Q. But have you got any recollection of any kind? A. I cannot recollect any conversation on any phase of the matter.

Q. Nobody is asking you for a conversation. All I am asking is whether you ever can recollect any time when you acted as an identifying witness on an application for a passport. A. Well, on this particular occasion—

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Q. You can on this particular occasion recollect that you did something, can't you? A. Something, but the details of it I can't.

Q. Nobody is asking you for the details. Have you any idea with whom you went at the time when on this particular occasion you served as an identifying witness? A. Well, with a man named George Morris.

Q. Do you know who George Morris is or was? A. At the time he was George Morris so far as I am concerned.

Q. Well, you have seen these papers that have been presented here, and as I understood it, you recognized the photograph which you say you think looks like Mr. Browder. A. Well, after I knew of Earl Browder being general secretary of the Communist Party, I did become

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more and more convinced of the belief that it was one and the same man, if that is what you mean. But at the time the transaction took place I believed he was George Morris.

Q. I see. How did George Morris ever happen to ask you to go down to the Customs House to become an identifying witness? Have you got any recollection of that?

A. I can't recollect just how it happened. I can't recollect.

Q. Apparently it was somewhat of an unusual occasion in your lifetime; isn't that so? A. Well, not unusual in the sense that as a labor union official I was in the habit of going to various bureaus, such as the Compensation Bureau, with members of my organization.

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Q. No, I don't mean that. It was unusual in the sense that you can't remember ever having done it before or since? In other words, you were not in the habit of signing promiscuously applications for passports? A. That is correct.

The Court: All right.

By Mr. Dunigan:

Q. Mr. Powers, how long had you known this person George Morris? A. Well, for a period of years—several years.

465

Q. And do you have any recollection now of the time when you first met George Morris? A. I have no clear recollection of those meetings.

Q. Well, in 1927 how long had you known George Morris? A. Well, to the best of my recollection now, for five or six years.

Q. And during that period of time did you see him frequently? A. Not so frequently.

Q. Did you know George Morris's occupation? A. No.

Q. Did you ever ask him what his occupation was? A. No. I didn't know him well enough,—

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George E. Powers.—For Government—Direct.

Q. Did he ever tell you? A. I didn't know him well enough to ask him that question.

Q. What is that? A. I didn't know him well enough to ask him that question. I didn't make a social contact with him, so to speak, so close as that.

Q. What did you and George Morris have in common over the period of years that you knew him? A. Met him at various gatherings possibly, or affairs, bazaars, or social gatherings.

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Q. What kind of affairs and meetings? A. Meetings held by workers' clubs, by organizations, or sections of the Communist Party.

Q. And during those meetings you would converse with him from time to time? A. I can't recollect any conversations in which he and I participated. Possibly various groups of people might have said, "How do you do. This is so-and-so," etc. But I have no recollection beyond the ordinary amenities of social contact.

Q. Where did these various meetings take place that you have related to us? A. That I can't recollect. I can't recollect. I can only suppose that in the halls and buildings in New York City.

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Q. Of the various boroughs in New York City? A. Various halls and buildings in New York City used for such labor gatherings.

Q. I show you Government's Exhibit 16 in evidence again, Mr. Powers, and direct your attention to the oath of the identifying witness. Will you just read that printed portion above your signature? Will you read it out loud, Mr. Powers? A. It is not easy to read because the paper has been torn and it is folded somewhat. I will do the best I can.

"I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below—" then it is torn here, I can't make this out—"below

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my signature hereto affixed; that I know the applicant who executed the affidavit hereinbefore set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for five years."

Q. Now look again at Government's Exhibit 16, Mr. Powers, in evidence. On the first page of the application you will note that the applicant stated as follows: "I solemnly swear that I was born at Lawrence, Kansas, on May 20, 1891." Did you have any knowledge concerning the birth place of this alleged George Morris? A. No.

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Q. Did you have any conversations with this alleged George Morris on that subject? A. No.

Q. You will note that the application reads further that the name of the applicant's father was William Morris who was born at Urbana, Illinois, and was deceased in 1912. Did you have any personal knowledge concerning those facts? A. No.

Q. Did you inquire of this alleged George Morris as to the name and birth place of his father? A. I can't recollect whether I did or not.

Q. Do you recall whether he said anything to you concerning the birth place and date of his father? A. I have no recollection.

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Q. Now, will you note, if you look at the application, Mr. Powers, that it reads further, "I am domiciled in the United States, my permanent residence being 17 Christopher Street in the City of New York." Did you know whether or not this alleged George Morris in fact lived at 17 Christopher Street in this city? A. I can't recollect whether I—I might have known it at the time, but at this time I can't say with certainty. I can't recollect that knowledge that I might have had.

Q. Did you ever visit this alleged George Morris at that address? A. No.

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Q. Did you have any conversation with any other persons as to whether or not George Morris lived at 17 Christopher Street? A. Not to my recollection.

Q. Did he tell you that he lived there? A. That I can't recollect.

Q. Did you ask him? A. I couldn't recollect that either.

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Q. Did this alleged George Morris, Mr. Powers, at the time you accompanied him to the Passport Agency and swore to his application as an identifying witness, tell you the countries that he expected to visit after he obtained his passport? A. I can't recollect that. I am sorry I have to repeat the word "recollect" so much. As I stated at the outset I can't recollect any of the details that might have taken place. I unfortunately can not recall.

Q. Did you ever visit George Morris over the period of years that you said you have known him, at his home? A. I don't remember having done so.

Q. What was your answer? A. I don't remember having done so.

Q. Do you recall whether he ever visited you at your home? A. I don't believe so.

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Q. Did you know the names of any other persons who knew this alleged George Morris? A. I can't remember.

Q. Well, did you ever speak to him when he was in company with other persons over the period of years which you stated you have known him? A. I can only say that he must have spoken to me or I might have said something to him, but any positive knowledge or recollection I don't possess.

Q. Well, you swore on the application that you had known him personally for five years? A. Yes, that is meeting him infrequently but not developing a close relationship or friendship or anything of that sort.

Q. Now, if you will examine the application before you, Mr. Powers,—it is Government's Exhibit 16 in evidence—

George E. Powers—For Government—Direct.

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and on the reverse side you will note that the applicant gave as his occupation journalist. Do you see that? A. Yes.

Q. Did you know whether or not this alleged George Morris was in fact a journalist? A. I can't recollect whether I knew him as such at that time or not.

Q. Well, did you ask him whether or not he was a journalist? A. I don't believe so. I don't recollect.

Q. Did you read his application at the time you swore to it as an identifying witness? A. All I can say is that I must have done so, but I can't recall the act.

Q. Well, didn't you? A. I presume—all I can say is 476 that I can presume so. Anything that I am positive of I will tell you, but I can not say with positive certainty something that I have to reconstruct that accords with this thing, because, as I stated, Mr. Dunigan, in the Grand Jury, this whole transaction took place so long ago that I had practically forgotten about the whole matter until it was called to my attention by presenting me with this document.

Q. How many times, Mr. Powers, to your knowledge have you gone to the Passport Agency and sworn to applications as an identifying witness? A. To the best of my recollection I believe this is the only time. But it may be it may have happened, because as I stated, I have been in 477 the habit as a labor union official in going to various government buildings in compensation matters and other things of that character on behalf of various people, members of the organization, and so on. I may have done something of that kind. I wouldn't say with definite certainty at this time unless I had documentary evidence that would refresh my mind upon the matter.

Q. You remember going to government buildings in connection with compensation matters. Do you remember going in connection with passport matters? A. I don't recollect. I don't recall.

Q. Have you ever obtained a passport yourself? A. No. That I can state definitely. I never have.

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George E. Powers—For Government—Direct.

Q. So to the best of your recollection this is the only time that you went to the Passport Agency?

The Court: Anything more you want to ask him?
I think we have had enough of this.

A. To the best of my recollection and belief I guess.

Q. You told us that you met the defendant Browder about 1930 or 1931. Is that correct? A. I would say that I met him at that time, but that I knew of his being general secretary of the Communist Party when he became such.

479

Q. Well, can you give us the approximate date when you first met Earl Browder face to face under the name of Earl Browder? A. I can't recall any date.

Q. Well, what is the best date that you can fix for us? A. I can't recall any date. The fact is that I have seen him at mass meetings and so on at which he spoke as representative of the Communist Party.

Q. Well, now, can you fix the approximate date of the first mass meeting or other type of meeting that you saw Earl Browder speak or heard him speak? A. It is so long ago that I can't recall anything about it.

480

Q. Would it have been about 1930 or 1931? A. It might have been about that time.

Q. On the first occasion when you did see him speak at a mass meeting were you surprised in any way? A. I can't recall my thoughts or sensations or feelings at that time. But I did state—I want to say, as I stated,—

The Court: Was the oratory good?

The Witness: It generally was.

Q. Well, at the time when you saw him at the first mass meeting did your trip down to the Passport Agency come back to your mind? A. I don't believe—well, I can't answer that question definitely. I would only be guessing, and I don't think you want guesses.

Elma V. Waldron—For Government—Recalled, direct.

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Q. At the time when you first saw the defendant Browder speak at a mass meeting did you associate his appearance in any way with your trip down to the Passport Agency?
A. I can't say that that was the case. Not the first time necessarily.

Mr. Battle: Will your Honor allow me to defer my cross-examination until tomorrow morning?

The Court: Yes, I think so. How long will it take?

Mr. Battle: I can't tell, your Honor. I hope not long. 482

The Court: Half past ten tomorrow morning.

(Adjourned to Friday, January 19, 1940, at ten-thirty a. m.)

New York, January 19, 1940, 10:30 a. m.

(Trial resumed.)

Mr. Cahill: Any cross-examination of Mr. Powers?

Mr. Battle: Yes, I want to ask him a few questions.
(Witness Powers not present.) 483

Mr. Cahill: Suppose we go on to something else.

The Court: Yes.

ELMA V. WALDRON, recalled as a witness on behalf of the Government, testified further as follows:

Direct Examination by Mr. Werner:

Q. Mr. Waldron, you have previously testified that you are an agent of the Department of State in the New York Passport Agency? A. Yes, sir.

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Elma V. Waldron—For Government—Recalled, direct.

Q. And how long have you been such? A. Over twenty years.

Q. And as such are you authorized to administer oaths in connection with applications for passports? A. I am.

Q. I show you Government's Exhibit 16 in evidence and 16-A for identification, and ask you if you can state whether you have seen them before? A. Yes, sir.

Q. When?

485

Mr. Battle: I make the same objection, if your Honor please—

The Court: The same ruling.

Mr. Battle: —as to all the other testimony in regard to Morris and Dozenberg, on the same grounds, and an exception.

Q. When, Mr. Waldron, was the first time? A. Well, I refer to the date on here, November 17, 1927.

Q. On that date did a man come before you and acknowledge his signature on that application? A. Yes, sir.

The Court: What was the date?

486

The Witness: November 17, 1927.

Q. And likewise, did an identifying witness come before you and acknowledge his signature and take an oath? A. Yes.

Q. Now, Mr. Waldron, how many passport applications have been executed before you since the date of Government's Exhibit 16 in evidence approximately? A. Around the thousands I guess.

Q. A thousand? A. Oh, yes, more or less.

Mr. Battle: In the thousands.

Q. And do you recall each and every one of these applications? A. No.

Elma V. Waldron—For Government—Recalled, direct.

487

Q. Have you any specific recollection of the application before you, Government's Exhibit 16 in evidence, and 16-A for identification? A. Only that my signature appears thereon.

Q. When an applicant appears before you, Mr. Waldron, he presents two identical photographs of himself, does he not? A. Yes, sir.

Q. And do you compare the photographs that he presents with his appearance at the time that he presents them? A. Yes, sir.

Q. And by looking at Government's Exhibit 16 in evidence can you state that the application who appeared before you with that application looked like that photograph? A. Yes.

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Q. Mr. Waldron, have you an invariable practice that you follow with respect to applicants for passports? A. Yes.

Q. And did you follow it in the case of Government's Exhibit 16 in evidence and 16-A for identification? A. Yes.

Q. Will you tell his Honor and the jury just what you said to the applicant and just what occurred?

Mr. Battle: I make the same objection and I further object to the question in that form. I have no objection to his stating, at least subject to the other objections. I would have no objection to his questioning under my previous objection, but I do object to his questioning in this form as to what he said to this applicant, because the witness says he has no recollection of any specific question. He is simply testifying from general procedure.

489

The Court: Overruled.

Mr. Battle: I object to the form of the question in asking the witness what his personal recollection was. I except.

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Elma V. Waldron—For Government—Recalled, direct.

Q. Do you ask all applicants the same questions or a series of basic questions? A. A series of basic questions, yes.

Q. Will you tell his Honor and the jury what those questions are, and if you can, look at Government's Exhibit 16 in evidence and 16-A for identification, state what that indicates the applicant answered? A. "Did you ever have a passport before?"

Q. And can you tell from looking at Government's Exhibit 16 in evidence what the applicant answered? A.

491 "No," or "None."

Q. Mr. Waldron, when you say "No," you don't mean that you can't recollect; you mean that the applicant answered "No"? A. That is correct.

Q. And what else did you say? A. "Do you solemnly swear the statements in your affidavit to be true?"

Q. And can you tell by looking at Government's Exhibit 16 in evidence, what the applicant answered? A. Yes.

Q. What did he answer? A. "Yes."

Q. Can you also tell by looking at Government's Exhibit 16 in evidence, what you asked the identifying witness? A. "Do you solemnly swear the statements in your affidavit to be true?"

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Q. And can you tell from looking at Government's Exhibit 16 in evidence who the identifying witness was? A. George Edward Powers.

Q. What did Mr. Powers answer? A. "Yes."

Q. Now, what proof of citizenship did the applicant submit with the application for a passport, Government's Exhibit 16 in evidence? A. An affidavit executed by Martha Morris.

Q. Is that Government's Exhibit 16-A? A. I couldn't tell you that.

Q. (Indicating on paper to witness.) A. Yes.

Mr. Werner: I offer Government's Exhibit 16-A for identification in evidence.

Elma V. Waldron—For Government—Recalled, direct.

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Mr. Battle: I object to it on all the grounds mentioned before; on the ground that it is incompetent and immaterial.

The Court: Same ruling.

Mr. Battle: And does not come within the issues in this case; it is too remote; highly prejudicial, and that it is in every respect incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Battle: I except.

(Government's Exhibit 16-A for identification received in evidence.)

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(Paper marked Government's Exhibit 17 for identification.)

Mr. Werner: I offer Government's Exhibit 17 for identification in evidence.

Mr. Battle: No objection. Will you read it to the jury.

Mr. Werner: I will read it.

(Government's Exhibit 17 for identification received in evidence.)

(A paper is marked Government's Exhibit 18 for identification.)

Mr. Werner: I offer Government's Exhibit 18 for identification in evidence.

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Mr. Battle: Is that under the stipulation?

Mr. Werner: Yes.

Mr. Battle: No objection.

(Government's Exhibit 18 for identification received in evidence.)

Mr. Werner: May I read these to the jury?

The Court: Yes.

(Government's Exhibits 16, 16-A and 17 read to the jury.)

Mr. Battle: There was something you read from the application in which you said "My last pass-

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Elma V. Waldron—For Government—Recalled, cross.

port was obtained from—None.” Will you read the rest of it?

Mr. Werner: There is nothing else filled in there. Suppose we show it to the jury.

Mr. Battle: I will read this sentence: “My last passport was obtained from—None”, and under this is written the words, “Washington or location of office address on blank,” and the word “Date” written underneath “And was” blank. Underneath that is written, “Disposition of passport.”

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By Mr. Werner:

Q. Mr. Waldron, after that application for a passport had been executed before you, what did you do with the application and affidavit; that is, Government's Exhibits 16 and 16-A in evidence? A. It was forwarded to the Department, if that is what you mean, for consideration.

Q. The Department where? A. Department of State, Washington, D. C.

Mr. Werner: That is all.

498

Cross Examination by Mr. Battle:

Q. Mr. Waldron, I just want to make it perfectly clear: have you any idea how many thousand applications for passports you have had since 1927? A. I couldn't tell you that, only approximately. There are so many.

Q. You don't pretend to have any independent recollection of the circumstances of any particular application, do you? A. Well, some I do and some I don't.

Q. As to this one, do you have any independent recollection? A. Not as to this one, no.

Q. So your testimony as to this application is merely based on what your general practice was? A. Yes.

John O. Bell—For Government—Recalled, direct.

499

Q. And of course you don't mean to say that your practice may not on occasion have varied in these thousands of cases? A. Very seldom.

Q. You are not a machine, you are a man. A. Well, I am pretty nearly a machine.

Mr. Battle: That is all.

JOHN O. BELL, recalled as a witness on behalf of the Government.

500

Mr. Werner: Your Honor, with Mr. Battle's consent I should like to make Exhibit 16-A a part of Exhibit 16. It is really a part of 16.

The Court: Well, why not leave them as they are.

Mr. Werner: If your Honor prefers that, all right. They were both sent in together and they should be attached together.

The Court: They can be attached. I can't see any reason why they shouldn't stay as they are.

501

Direct Examination by Mr. Werner:

Q. Mr. Bell, will you examine Government's Exhibit 16 in evidence and 16-A in evidence, and state, if you can, whether that application for passport with its accompanying affidavit was forwarded and received at the passport division of the Department of State at Washington?

Mr. Battle: Same objection, your Honor, on the same grounds.

The Court: Same ruling.

Mr. Battle: Exception.

502

John O. Bell—For Government—Recalled, direct.

A. Yes, this application does indicate that it was received in the Department.

503

Q. Now, in the same manner as you have explained the markings on the Dozenberg passport application, and on the Browder passport application, Government's Exhibit 2, would you explain to his Honor and the jury the course which the passport application, Government's Exhibit 16, and the affidavit, Government's Exhibit 16-A, comprising the Morris application, took at the Department? A. The application indicates that it was received in the Department. It is stamped in the lower right hand corner, "Fee received November 19, 1927," the date upon which the fee was received, and the number immediately below that is the fee number for accounting records. The number in the upper right hand corner 475085, is the number of the passport, and the stamp below that "Passport issued November 19, 1927, Department of State," indicates that a passport was issued on that date.

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The blue crayon marks are made by the junior examiner. His name is on the application, "James," and the date upon which he gave initial approval to the application. The red crayon marks are made by the senior examiner who gave final approval to the application on the date below her initials. The stamp on the right hand corner above the fee stamp, says "Filed November 23, 1927," and indicates that the application was placed in the files of the Department on that date.

Another file stamp right beside it, "Filed April 26, 1929" indicates that the application had been withdrawn and was refiled on that date in April, 1929. The stamp on the right hand side, "Recorded in the Fraud file as a suspect, 12/2/29, Wright," is an indication that a reference was made from this application to another file of the Department on that particular date, by Miss Wright, an employe of the Department. The back of the application bears only one notation other than that written in ink, and

John O. Bell—For Government—Recalled, direct.

505

that is a crayon notation which I think was also written by the applicant; that was not put on by the Department.

Government's Exhibit 16-A is an affidavit submitted with this application as proof of birth in the United States. It does not bear any marking.

Q. And that was accepted as proof of citizenship, Government's Exhibit 16-A? A. This affidavit was accepted in lieu of a birth certificate.

(Paper marked Government's Exhibit 19 for identification.)

506

Q. Mr. Bell, by looking at the application, Government's Exhibit 16 in evidence, can you state if a passport was issued? A. A passport was issued as indicated by the stamp.

Q. On what date? A. November 19, 1927.

Q. Can you also state how that passport was sent out from the Department? A. Yes. The application indicates that the passport was sent out by registered mail to the address specified in the application, "George Morris, care of Williams, 17 Christopher Street, New York City, New York."

Q. And are records kept by the Department of registered mail leaving the Department? A. Yes, we keep a daily record of such.

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Q. I show you Government's Exhibit 19 for identification and ask you if that is such a record? A. Yes, this is the record of passports sent by registered mail on November 21, 1927.

Mr. Werner: I offer Government's Exhibit 19 for identification in evidence.

Mr. Battle: No objection, of course, except subject to the other objections made. I have no specific objection to this.

508

John O. Bell—For Government—Recalled, cross.

The Court: Yes.

(Government's Exhibit 19 for identification received in evidence.)

509

Q. I show you Government's Exhibit 19 in evidence and ask you if you can state when the George Morris passport which you have referred to was sent out by the Department? A. Yes. On the third page of Government's Exhibit 19, there is an entry with a number preceding it. That is the registered number placed on the envelope, 702412, and followed by the words "Morris, George, care of Williams, 17 Christopher Street, New York City."

Q. Now, do you know, Mr. Bell, whether or not that passport was returned to the Department for non-delivery? A. When a passport is returned, a reference is made on the application as a part of the file. There is no such record in this case.

Mr. Werner: Thank you.

Cross Examination by Mr. Battle:

510

Q. Mr. Bell, this application has the entry on it of—

Mr. Battle: What is the exhibit number, Mr. Werner?

Mr. Werner: Exhibit No. 16.

Q. (Continuing) Has the entry, "Passport issued November 19, 1927." That indicates that the passport was actually issued on that date, doesn't it? A. That is correct.

Q. And the application indicates that the applicant desired the passport to visit the countries of Germany, France and England? A. That is what it stated.

Q. And that is what was on the application. Now, this entry that you spoke of on the side, is that "Recorded"? Is that the word "Recorded"? A. That is right.

John O. Bell—For Government—Recalled, cross.

511

Q. "Recorded in the Fraud File as suspect 12/2/29." Underneath that is the word "Knight" or "Wright"? A. W-r-i-g-h-t.

Q. You say Miss Wright was a clerk there at that time? A. That is right.

Q. What are her duties? A. Miss Wright was drafting clerk in the Fraud Section, dealing with applications in which some doubt existed as to authenticity.

Q. Well, this entry here indicates that some doubt existed as to the authenticity of this application at the time? A. It indicates that in 1929, two years after the issuance

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of the passport, there was reason to suspect that this application was not bona fide.

Q. And that there was an investigation made on that subject? A. Not necessarily that there was an investigation made.

Q. But it was regarded— A. It was regarded as possibly fraudulent.

Q. To such an extent that it was recorded in the fraud file? A. That is right.

Q. A suspect. And by whom is that fraud file handled? By whom was it handled? A. The fraud file is and always has been under the direct supervision of Mr. Nicholas here at the table.

513

Q. And this is Mr. Nicholas here? A. That is correct.

Q. And that "12/2/29", that is the 2nd of December, 1929, is it not? A. That is correct.

Q. Does that indicate that the recording was on that date? A. Yes.

Q. And that the investigation, or whatever proceedings were had, were about that time? A. It doesn't necessarily indicate that there was any investigation at all.

Q. What does it indicate? A. It indicates that there was some information available to Miss Wright, or furnished to her—I don't know from what source in this particular case—indicating that there was reason to sus-

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John O. Bell—For Government—Recalled, re-direct.

pect that this application was not bona fide, sufficient for her to record it.

Q. And that information was filed then? A. That is correct.

Q. You have no personal knowledge yourself as to this recording being recorded by the fraud file, I suspect? A. No, sir.

Q. The matter was not called to your attention at that time? A. No, sir. I was not in the fraud section at that time.

515

Q. Are you in the fraud section now? A. No, but I have been.

Q. Since that time? A. Since that time.

Q. But you had no personal knowledge about this? A. No.

Mr. Battle: That is all.

Re-direct Examination by Mr. Werner:

516

Q. Mr. Bell, in the event that a passport application such as Government's Exhibit 16 in evidence is referred to the fraud file, in the event that the Department knows or has reason to believe that that passport application was made by someone with a name other than the name appearing on the application, would that fact be noted by cross indexing on the application? A. I am afraid I don't understand your question very clearly.

Q. In the event that the Department found out that a passport application in one name had some connection with an individual in another name, would that fact be indicated in the cross reference file of the Department? A. Yes.

Q. And is there any indication of such knowledge by the Department in this case? A. The only indication here is that there was some suspicion.

John O. Bell—For Government—Recalled, re-cross.

517

Q. And there is no indication that the Department knew that the applicant in this case had any other name, is there? A. No, there is not.

Mr. Werner: Thank you.

Re-cross Examination by Mr. Battle:

Q. The entry does indicate that they suspected that? A. The entry indicates that there was suspicion that the person who obtained this passport was not George Morris.

518

Q. There was that suspicion in 1929, and that suspicion was sufficiently definite to have the application recorded in the fraud file formally? A. We do that whenever there are any suspicions.

Q. The suspicion was regarded as of sufficient importance to have it so recorded, was it? A. Yes.

Mr. Battle: That is all.

Mr. Cahill: Call Mr. Powers.

GEORGE E. POWERS, resumed the stand:

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Cross Examination by Mr. Battle:

Q. Mr. Powers, do you recall an investigation made by the Government in 1929, concerning this application in the name of George Morris? A. I do recall something about such an investigation.

Q. What do you recall? A. Of course, I haven't got a very clear picture of it—it is quite a long time ago—but as well as I can recall, I can't recall the name of the gentleman, but there was a man of the Department of Justice, I believe—I may not be certain of that either—

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George E. Powers—For Government—Cross.

but at least he was a Government official and he interviewed me.

By the Court:

Q. How do you know that? A. I beg your pardon?

Q. How do you know he was a Government official? A. Well, he purported to be; I will put it that way.

Q. You were not certain of it? A. I have no way of telling.

521

Q. Your recollection is not very clear? A. My recollection is well, it is just a recollection.

Q. You think he was a Government agent? A. To the best of my knowledge and belief.

Q. He might have been from the Department of Justice? A. Might have been from the Department of Justice.

Q. Or even from the Department of Commerce? A. I don't know about that, but to the best of my belief, he was from the Department of Justice.

Q. But you can't be sure? A. I can't be sure.

By Mr. Battle:

522

Q. That is your best recollection? A. That is my best recollection.

Q. Will you state what took place? A. As I recall it, there was some kind of a conference held. He wanted to see me and I wanted to see him with my lawyer. At that time my lawyer was, as I recall it, Joseph Brodsky. I can't recall anything that went on very definitely except that we—

Mr. Cahill: Can we have names and places, Judge? So that we have some basis here.

Mr. Battle: In 1929 I asked him about.

George E. Powers—For Government—Cross.

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The Witness: I would say it might have been around 1929.

Mr. Cahill: Who is the individual with whom the conversation is said to have been had? May we have the name?

The Witness: I don't know the name. I can't recollect the name.

By the Court:

Q. You did mention Mr. Brodsky. A. Mr. Brodsky was the attorney.

524

Q. He sat in with you? A. The only reason I can say Mr. Brodsky, is because usually Mr. Brodsky represented my interests in the legal sense.

Mr. Cahill: I hate to interrupt, but I must have some dates, some information on the identity of these people. What is the name of this official, and describe his credentials at least.

By Mr. Battle:

Q. This Government official, do you recall his name? A. I cannot recall his name. 525

Q. Did he show any badge or authority? A. Yes, as well as I can recall.

Q. What did that badge indicate as to his connection with the Government?

Mr. Cahill: I object to that. Let us have the badge described if we are going into it.

The Court: Well, he can't quite be sure.

Q. What is your best recollection? A. To the best of my knowledge and recollection—of course, I can't describe a badge. It is ten years ago. It would be ridiculous. But

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George E. Powers—For Government—Cross.

to the best of my knowledge and belief it was from the Department of Justice.

The Court: Why do you say it is ridiculous?
Merely because the jury smiled?
(No answer.)

Q. Where was this conference held? A. As I recollect it, it was in Mr. Brodsky's office.

Q. Well, state what took place at the conference. State what was said and done.

527

Mr. Cahill: If your Honor please, it is going to be extremely difficult to have any re-direct unless we have some names.

Mr. Battle: I have given the name and place—Joseph Brodsky. The other person, he doesn't know what his name was.

By the Court:

Q. Some time in 1929, that is how many years ago, if you can remember? A. Over ten years.

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Q. Are you sure it is 1929? A. I am not certain of that.

Q. It might have been 1930? A. I would have to have some record or something to establish that.

Q. You have no record? A. I have none.

Q. And where was Mr. Brodsky's office at that time? A. I am not sure of the exact address.

Q. It was in New York City, though? A. Yes.

Q. That is a big town? A. I am positive it was New York City.

Q. Do you think it was in the Borough of Manhattan? A. Very likely.

George E. Powers—For Government—Cross.

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By Mr. Battle:

Q. Will you tell us then what took place? A. I have no recollection of the details.

Q. What was the general subject of the conversation?

A. The George Morris passport.

Mr. Cahill: Unless there can be some identification here, I object to it because talking with an unknown person whom he thinks was connected with the Department of Justice, that affords no proper basis for—

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Mr. Battle: He says he was talking with the man.

The Court: I will let him testify and you can cross-examine. If you can get anything out of him on cross examination you are entitled to it.

Q. Will you continue and state what took place to the best of your recollection? A. To the best of my recollection, this man, this unnamed man, asked me questions about a passport. As I recollect it, this George Morris passport.

Q. Was Mr. Browder's name mentioned in the conference? A. Yes, I think it was, as I recollect it.

531

Q. And the subject of the conference was as to whether Mr. Browder and Mr. Morris were the same person? A. I believe something along that line.

Q. Along that line. And how long did the conference last? A. I couldn't say with any exactitude. It might have been twenty minutes, it might have been twenty-five minutes, or a half hour. Something like that. It didn't take very long. It might have been fifteen minutes.

Q. Did you hear any more about the matter? A. Not a thing.

Q. At that time were you asked whether, to the best of your recollection, Mr. Morris and Mr. Brodsky were the same person? A. Mr. Browder, you mean.

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George E. Powers--For Government--Cross.

Q. Mr. Browder. I beg your pardon. A. As I recollect it, yes.

Mr. Battle: That is all.

By the Court:

Q. And what did you say? A. Well, my response, as I recollect it, was simply a yes or no answer.

Mr. Cahill: Louder.

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A. (Continuing) A yes or no answer for the most part, as well as I can recollect.

Q. What was the answer, as you recollect? A. That regarded this Morris passport, that I recognized my signature, I believe, or something of that kind.

Q. I understood you to say that your recollection was, if you could recollect—the question was whether Morris was Browder, and I am asking you if you can recall what your answer to that question was? A. Well, first of all, I can't say with exactitude—I can't recollect exactly what questions were asked of me by that man.

534

Q. Why, you just stated in answer to Mr. Battle's question that the general topic of conversation was whether Mr. Morris was Mr. Browder. Is that still your recollection? A. In a general sense, yes.

Q. Yes. A. In a general sense.

Q. Now, I am asking you, what, if any, information you gave to this anonymous man with respect to that question? A. Well, to the best of my knowledge, that Mr. Morris was Mr. Morris.

Q. That is what you told him? That Mr. Morris was Mr. Morris? A. Yes.

Q. And not Mr. Browder? A. Yes.

Q. And then he went away, he was satisfied? A. That is right.

George E. Powers—For Government—Re-direct.

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Q. Was that a correct answer, as you look back? A. It was correct at the time.

Q. That was 1929? A. To the best of my knowledge.

Re-direct. Examination by MA Dunigan:

Q. Mr. Powers, when you were visited by this man whose name you cannot recall, but whom you have identified as a Government man, he showed you some papers, did he? A. First of all, I don't recollect that he had visited me.

Q. Well, did you visit him? A. Neither. It happened neither way. As I recollect it, we both visited Mr. Brodsky.

536

Q. And you stated that Mr. Brodsky was your attorney at that time? A. Well, I usually utilized his services.

Q. When this meeting took place, did you see some papers of any kind? A. I can recollect in general papers, but I couldn't say exactly how many papers.

Q. Were you shown a paper or papers with some photographs on? A. To my recollection, I believe I was.

Q. You believe that you were. A. Yes.

Q. You stated that you were questioned concerning one George Morris; is that true? A. To the best of my recollection.

Q. You and Mr. Brodsky and the agent—the Government man as you called him—were all present? A. Yes.

537

Q. Do you know whether or not Mr. Brodsky was Mr. Browder's attorney at that time also? A. I don't know.

Q. Now, what did you say to the Government agent when these photographs were shown to you and you were questioned about George Morris? Give us all of the conversation that you can recall. A. Well, I can't recall anything of the conversation in its exact aspects. All I can do is try to reconstruct as well as I can what might have taken place.

Q. Try your best to reconstruct what took place and tell us as best you can. A. There were some questions

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George E. Powers—For Government—Re-direct.

asked about this passport application, and to the best of my knowledge and belief it was the same document that was shown to me yesterday.

Q. Yes. A. I believe it was. I might be mistaken. But to the best of my understanding it probably was.

Q. Weren't you asked if the photograph appearing on the paper was not a photograph of Earl Browder? Wasn't that question put to you? A. Yes.

Q. And what did you say? A. My answer, as I recollect it, at that time was that that was George Morris.

539 Q. Did Mr. Brodsky see the picture? A. I don't know.

Q. Why did you feel it necessary to have a lawyer on this occasion, Mr. Powers? A. Well, as a labor union representative, and at that time I was involved in—I believe if I recollect rightly—I think there was a strike in process at the time, and labor representatives, when they are accosted by either City or State or National Government representatives, they usually are represented by lawyers. That is a common procedure.

Q. Well, you were the identifying witness on the application, were you not? A. Yes, as I recollect.

540 Q. And you swore to an affidavit that you had known the applicant personally for five years, isn't that true? A: That is true.

Q. Now you said that you first met Mr. Browder about 1930 or 1931? A. Yes, as I recollect.

Q. You swore you saw him face to face at that time, isn't that true? A. I can't be sure of that. As I stated yesterday, I might have seen him at mass meetings. I might have seen him at some other gatherings, but I have no clear recollection under what circumstances I might have seen him.

Q. That is, you saw him at mass meetings and you heard him speak? A. That is correct in general, yes.

Q. And you saw his physical appearance, didn't you? A: That is true.

George E. Powers—For Government—Re-direct.

541

Q. At that time did you associate Mr. Browder with this agent's visit and the picture that was shown you in 1929?

A. I can't state when that thought might have come into my mind. I can't state whether it was 1930, 1931 or 1932 or what particular time.

Q. You told us yesterday that when you did meet Mr. Browder you recognized that he and George Morris were the same man. Isn't that what you told us yesterday? A. Well, I don't know whether it was the first occasion that I laid eyes on Mr. Browder, that that thought came into my mind, but I recollect that it did come into my mind at some period, but I can't be sure of just when that happened.

542

Q. Well, it was about the time you first met him and recognized his physical description, isn't that so? A. Well, I am not sure, because sometimes you see a person at a mass meeting maybe a distance away. The lighting effect and all those things may not bring out the resemblance to anything you know or have seen. So I can't remember to say about that.

Q. You told us yesterday you first met Mr. Browder about 1930 or 1931? A. Approximately.

Q. You saw him at that time and saw his physical make-up, didn't you? A. Yes.

543

Q. This thing concerning this passport was coming up pretty regularly, wasn't it. Mr. Powers? A. No.

Q. Well, you signed as an identifying witness in 1927, didn't you? A. I presume I did.

Q. You were questioned concerning that application in 1929, two years later, isn't that true? A. Yes, as well as I can recollect.

Q. What is it? A. As well as I can recollect.

Q. And you met Mr. Browder about 1930, two years later? A. I am not sure whether it was 1930 or 1931.

Q. Well, there did come a time, however, when you came to the realization that Mr. Browder and Mr. Morris were

544

George E. Powers—For Government—Re-direct.

one and the same person, isn't that true? A. Well, I had an idea but I can't say that I was certain of it, but I had an idea, a thought that they may be one and the same person.

Q. You told us yesterday that there did come a time when you realized that Browder and Mr. Morris were one and the same person? A. Well, I wasn't positive of it, at least, as nearly as I could recollect, that there might be probably one.

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Q. Your recollection was pretty good, wasn't it, because you had known, according to your testimony, Mr. Morris for five years prior to 1927? A. Off and on I had met him casually.

Q. And you had occasion to see Mr. Browder frequently speak at mass meetings and other meetings in 1930 and 1931; isn't that true? A. Not so frequently. Over a period of two years you might say frequently, lumping it together. As I recollect, Browder did not speak every week or even every month where I would see him, anyway.

546

Q. Well, now, there wasn't much doubt in your mind, was there, Mr. Powers, when you saw Mr. Browder, that it was the man known to you as Morris? Was there any doubt in your mind on that point? A. Well, eventually—I thought there wasn't eventually.

Mr. Cahill: You say eventually there was no doubt?

The Witness: I would agree generally with that.

Q. When you did come to the realization that Mr. Browder was in fact Mr. Morris, did you have any conversation with Mr. Browder concerning the 1927 application? A. No.

Q. Did you ask him anything concerning your going down to the passport agency and swearing as an identifying witness? A. I have no recollection of it.

Max Bedacht—For Government—Direct.

547

Q. You didn't make any inquiry of Browder at all on that subject? A. I have no recollection of it.

Q. Well, now, did you seek out Mr. Brodsky when you came to the realization and inform him of the fact? A. I can't recollect having done so.

Q. When you came to the realization that Mr. Browder was in fact Mr. Morris, which was subsequent to your being questioned by the Government man, did you attempt to seek him out and reveal that fact to him? A. I have no recollection of it.

Q. You made no statement to any person when this realization came to you that Mr. Browder was in fact Mr. Morris? A. Well, I might have mentioned it casually to some of my associates, possibly.

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Q. Well, did you? A. I might have. I can't be sure of that.

Q. You are not sure on that point? A. No, I am not.

Q. This much is certain, that you didn't reveal it to your attorney, and you made no effort to reveal it to any Government official, isn't that true? A. As well as I can recollect.

Q. And you knew at the time that you had been questioned concerning that point, isn't that true? A. That is true.

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Mr. Dunigan: That is all.

(Short recess.)

MAX BEDACHT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunigan:

Q. Do you know the defendant in this case, Earl Russell Browder? A. I do.

550

Max Bedacht—For Government—Direct.

Q. How long have you known the defendant Browder?

A. Some nineteen years or nearly twenty.

Q. You first met him about 1920? A. Yes.

Q. Have you seen the defendant frequently since you first met him in 1920? A. Quite frequently.

Q. Have you served on committees with him, and things of that sort? A. I have.

Q. What is your present occupation, Mr. Bedacht? A. I am national secretary of a fraternal benefit society.

Q. What is the name of the society? A. The International Workers' Order.

551

Q. How long have you been secretary of that organization? A. Seven years.

Q. Prior to the time when you became connected with the International Workers' Order, what was your occupation? A. I was working in the national office of the Communist Party.

Q. How long did you work in the national office of the Communist Party? A. Since 1919, except with interruptions in which I worked in district organizations.

Q. So that from 1919 up to the present time you have been connected in one way or another with the Communist Party and the International Workers' Order? A. That is true.

552

Q. In connection with your work in those organizations you had occasion to meet the defendant Browder from time to time, is that right? A. I have.

Q. Mr. Bedacht, have you ever seen the defendant Browder outside the territorial limits of the United States? A. Yes, sir, I have.

Q. And where did you see the defendant Browder the first time outside the United States? A. In Moscow.

Q. Can you give us the approximate time when you saw him in Moscow? A. In the Summer of 1921.

Q. How long were you in Moscow in the Summer of 1921? A. A number of weeks.

Max Bedacht—For Government—Direct.

553

Q. Do you know how long the defendant Browder was in Moscow in that year? A. I do not.

Q. How many times did you see him in Moscow during the period of time you were there? A. Oh, probably for a week or ten days I saw him quite frequently, maybe every day.

Q. Were you traveling on business or pleasure? A. Traveling on business.

Q. Do you know whether or not the defendant Browder was traveling on business or pleasure? A. I take it for granted he was traveling for business.

554

Mr. Battle: If your Honor please, I make the same objection to this testimony as was made to the other testimony along the same lines, that it is incompetent, immaterial and irrelevant, and not within the issues of this case. It is too remote, relates to periods back in 1921, while the charge here is for use in 1937 of a passport issued in 1934, and the last passport before that was in 1931. This long antedates all those dates and it is not in any way relevant or material; it is prejudicial, and we object on those grounds.

The Court: Well, I don't know exactly what the purpose of it is. There was no objection to the question other than the general objection which has been made previously. It has been understood that you had an objection to that character of testimony, but if there are other objections I think they should be interposed before he has an opportunity to answer the question.

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Mr. Battle: I object to the present line of testimony. I object to this particular question.

The Court: I will deny the motion for the reasons I have already given.

Mr. Battle: Exception.

556

Max Bedacht—For Government—Direct.

Q. Now, Mr. Bedacht, going back to the years 1920 and 1921. You at that period of time saw the defendant Browder frequently, did you not? Quite frequently? A. Not very frequently. I am not quite sure whether I saw him the first time in 1920 or 1921, and I didn't see him frequently then.

Q. In any event, you became acquainted with him in 1921 at least? A. I did.

557 Q. I show you this book. It is marked Government's Exhibit 4 in evidence, and direct your attention to this sheet which is a passport application in the name of Nicholas Dozenberg, and particularly call your attention to the photograph appearing on the reverse side of the sheet. Do you recognize that photograph? A. It looks like Mr. Browder.

Mr. Battle: Objection, your Honor.

The Court: Overruled.

Q. What was the answer? A. It looks like Mr. Browder.

558 Q. Would you say it was Mr. Browder at the time when this application was made, and that was in March 1921, as you knew him then? A. Well, I cannot answer that just yes—it looks as if it were Mr. Browder at the time.

Q. At the time, meaning 1921. A. Yes.

Q. And this photograph that you are looking at looks like the Browder that you knew and the Browder that you saw in Moscow in 1921, is that correct? A. Yes.

Mr. Dunigan: Before I go further, I notice, if your Honor please, that the affidavit of Martha Morris, submitted in support of the application of George Morris, was marked 16-A, and also 1-A for identification. I think 1-A should be marked out or the record read that 16-A is the same as 1-A for identification.

Max Bedacht—For Government—Direct.

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The Court: It should be marked in evidence 16-A. There will be a note on the record as you have stated it, that 16-A is the same as 1-A for identification.

Q. Mr. Bedacht, I show you this paper. It is Government's Exhibit 16 in evidence, a passport application in the name of George Morris, and I call your attention to the photograph on the reverse side of that application. Do you recognize that photograph? A. It looks like Mr. Browder.

Q. Well, would you say that it was Mr. Browder, or is Mr. Browder as you knew him in 1927 when the application was made? A. It looks like Mr. Browder did look.

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Q. Now on Government's Exhibit 16-A you will note that it is an affidavit of birth signed by one Martha Morris; you will note at the bottom of that exhibit appears the name J. L. Perilla. Do you know a J. L. Perilla? A. Yes, I do.

Q. When did you first meet him? A. Probably '29 or '28.

Q. At the time when you met him did you know what his occupation was? A. He was working in the district office of the Communist Party in New York.

Q. When is the last time that you saw Mr. J. L. Perilla? A. I cannot recollect the time I saw him last, but it is a good many years ago.

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Q. Do you know where Mr. Perilla is now? A. I do not.

Q. Now, Mr. Bedacht, you have told us that you saw the defendant Browder in Moscow in 1921. Did you ever subsequent to 1921 again see the defendant Browder outside the territorial limits of the United States? A. In 1933.

Q. Where did you see the defendant Browder in 1933? A. In Moscow.

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Max Bedacht—For Government—Direct.

Q. How long were you in Moscow in 1933? A. Very few weeks.

Q. Do you know how long the defendant Browder was there? A. I do not.

Q. How many times did you see him in Moscow in 1933? A. During the period I was there, quite frequently.

Mr. Battle: I make the same objection to this testimony.

The Court: Overruled.

563

Mr. Battle: Exception.

Q. Going back for a moment, Mr. Bedacht, to 1921, when you say you saw the defendant Browder in Moscow, and you stated that so far as you knew he was there on business. Do you know the nature of the business? A. He was attending a congress.

Q. Will you tell the court and jury what you mean by a technical congress? A. Pardon me. I didn't say technical.

564

Mr. Battle: I object to this as incompetent, irrelevant and immaterial. In addition to the other objections, I object on the ground that it has no materiality.

The Court: How is that material, without reference to these other objections that have been made?

Mr. Dunigan: I think the point, your Honor—

The Court: I will sustain the objection to the question.

Mr. Dunigan: The point here, your Honor, and the relevancy of this particular testimony is that this witness and this defendant were both present at Moscow on the same type of business.

The Court: He has already testified to that effect. I don't think it is necessary to go into detail

Max Bedacht—For Government—Direct.

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with respect to the character of the business that either or both of them were engaged in.

Mr. Dunigan: It is for that reason that the witness distinctly recalls the meetings in Moscow.

The Court: I will sustain the objection.

Mr. Battle: I ask that the answer so far as given be stricken.

The Court: It has not been given.

Mr. Battle: So far as given.

The Court: There was no answer given.

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Q. Mr. Bedacht, I show you this paper marked Government's Exhibit 3 for identification and call your attention to the photograph appearing on the reverse side of the document. Do you recognize that photograph?

Mr. Battle: What paper is that?

Mr. Dunigan: That is the Richards application.

Mr. Battle: I object to that, if your Honor please, as incompetent, irrelevant and immaterial, and not within the issues.

The Court: What is Exhibit 3?

Mr. Dunigan: The Richards application in 1931.

The Court: Objection overruled.

567

Mr. Battle: Exception. I may say in this regard, your Honor will recall that we do not dispute the fact that the Richards passport was issued. We concede that. For that reason, in addition to the other objections, I think the application itself would be incompetent.

The Court: No, I don't think that is so. I assume there is some issue in the case. I will overrule the objection.

Q. Do you recognize the photograph, Mr. Bedacht? A. It looks like Mr. Browder.

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Matthew C. Earl—For Government—Direct.

Q. You will note that that paper is dated November 18, 1931. Would you say that the photograph appearing there is a photograph of Mr. Browder as you knew him at that time? A. I don't know whether I have photographic imprints in my mind of the various times.

Q. Well, would you say that the photograph appearing on that paper, Government's Exhibit 3 for identification, is a photograph of Mr. Browder? A. It looks like it.

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Mr. Dunigan: I will offer Government's Exhibit 3 for identification.

Mr. Battle: The same objection, your Honor.

The Court: The same ruling.

(Government's Exhibit 3 for identification received in evidence.) (Read to the jury.)

Mr. Dunigan: That is all, Mr. Bedacht. Thank you very much.

Mr. Battle: No questions.

Mr. Werner: Mr. Earl, please.

570

MATTHEW C. EARL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Earl, what is your occupation? A. Agent of the State Department, at the Passport Agency in New York.

Q. Will you keep your voice up just a little more. A. I will try.

Q. Mr. Earl, how long have you been an agent in the State Department? A. Since 1927.

Q. And as an agent of the State Department, have you authority to administer oaths in connection with applications for passports? A. I have.

Matthew C. Earl—For Government—Direct.

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Q. Approximately how many applications for passports have been executed before you, if you recall? A. Well, I can't say over the period of years, but it runs into thousands.

Q. Do you recall each and every applicant and each and every identifying witness who appeared before you? A. No, I couldn't.

Q. Do you follow the same basic procedure with respect to each and every application? A. Yes, sir.

Q. I show you the second sheet of Government's Exhibit 3 in evidence and ask you if you can state whether or not that passport application was executed before you? A. Yes, I can. 572

Mr. Battle: I make the same objection, if your Honor please, to this line of testimony as before.

The Court: The same ruling.

Mr. Battle: Respectfully except. And I will not continue to object.

The Court: Right.

Q. Now, examining the passport application, Government's Exhibit 3 in evidence, can you tell his Honor and the jury what you said to the applicant at that time and what the applicant said to you in connection with your usual practice? A. Well, I checked the application, and seeing that the photograph corresponds to the applicant appearing before me, and then I checked down the spaces on the application to see they are completely and correctly filled in. 573

Q. In this case did you check the photograph with the applicant who appeared before you? A. I did.

Q. And I call your attention to the fact that the applicant on the photograph had no mustache? A. That is right.

Q. Can you state whether or not the applicant who appeared before you had a mustache? A. I can say that the

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Matthew C. Earl—For Government—Direct.

applicant who appeared before me resembled the photograph as here now.

Q. Can you state whether or not he had a mustache? A. He would not have had a mustache, otherwise I would not have taken his photograph.

Q. Will you proceed with the application, Mr. Earle, and tell us what else took place? A. Well, as I say, I checked down on the application, filling in spaces that were not filled in by the applicant, and asked the applicant for the correct information, such as on one space—

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Q. What did you say to him, Mr. Earle? A. Well, my customary practice, when that space is not filled in, I ask the applicant has he ever been abroad previously.

Q. And can you tell what the applicant answered in this case? A. Well, he must have given me some information that he had never been abroad before, because I wrote the word "None" in that space.

Q. In other words, the word "None" in the block provided for the question with respect to residing outside the United States is written in your handwriting? A. That is right.

576

Q. I call your attention to the fact that in the block it says, "The portion in this block to be filled in by a woman who is married to an alien and by a person whose father was not born in the United States," and that the Richards passport does not pertain to either of those classifications? A. I know that.

Q. Is it your practice in all cases to ask whether the applicant has resided outside of the United States? A. I do that on all cases regardless of whether the applicant is born abroad or here when that space is blank.

Q. And in this case the applicant told you he had never resided abroad? A. That is right.

Q. When the applicant tells you that he has never resided abroad, do you ask him whether or not he has had a previous passport? A. I customarily do.

Matthew C. Earl—For Government—Direct.

577

Q. Can you tell whether or not you did in this case? A. I usually ask both questions simultaneously, one following the other.

Q. And can you tell us from looking at Government's Exhibit 3 in evidence, what the applicant's answer to you was with respect to a previous passport? A. That he had no former passport.

Q. Now, I call your attention further to the fact, Mr. Earle, that on the left side of the second page of Government's Exhibit 3, there is a stamp "Birth certificate seen," with some initials on it. Was that stamp affixed by you?

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A. It was.

Q. And will you tell his Honor and the jury what that stamp indicates? A. Well, when a person is born in this country, they present a birth certificate or some other acknowledged and certified record of birth, and if they present a birth certificate we put the rubber stamp on the side, showing the birth certificate seen, and then whoever sees it initials it. In this case it has my initials, therefore I certified it.

Q. Can you state that the applicant in this case presented a birth certificate in the name of Albert Henry Richards, born in Oshkosh, Wisconsin, on September 4, 1895? A. I can.

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Q. Thereafter did you return the birth certificate to the applicant? A. I then returned it to the applicant.

Q. I call your further attention to the fact that the statement appears, "\$6.00 fee received." There has been testimony that the passport costs \$2.00 and there is an extra dollar for execution. Can you explain why this is \$6.00?

A. At that time, 1931, the fee was \$5.00 for the passport and \$1.00 for the execution. That had been in effect from July 1st, 1930, until it was again changed in May, 1932.

Q. I call your attention to the reverse side of the application comprised in Government's Exhibit 3 and ask you if you can state from that the date that this passport

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Matthew C. Earle—For Government—Direct.

application was executed before you? A. Yes. It was executed November 18, 1931.

Q. And is that your signature above the line, "Agent of the Department of State"? A. It is.

Q. In both places where that signature appears it was made by you? A. It was made by me.

Q. Can you also state, Mr. Earle, who appeared at the time this application was made? Whether one or two or more appeared? A. Well, there was at least one person, the witness who signed on the oath and affidavit of identifying witness.

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Q. And the applicant himself? A. And the applicant himself. One person besides the applicant.

Q. So that at least two people appeared? A. That is right.

Q. I call your attention to the stamp, "New York Pouch" appearing on the second page of the application and ask you what that indicates? A. Well, that indicates the request of the applicant to have the passport returned to our office from Washington, or in the New York Pouch, as we call it, which is a diplomatic pouch coming to our office, and that is put on in rush cases to hurry the passport along.

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Q. And in that case the applicant or his authorized representative may pick up the passport at the local agency? A. That is right.

Q. Can you tell us in which place that application was made? A. That was made at our agency at Wall Street.

Q. Mr. Earle, when you administered the oath to the applicant, what did you say to him? A. Well, we ask, does he swear that this is his signature, and he swears to the truth of the statements in the application and he also swears the oath of allegiance to the United States.

Q. And can you tell what the applicant stated? A. Well, he must have acknowledged the three, otherwise I would not have signed it.

Matthew C. Earl—For Government—Cross.

583

Q. With respect to the word "None" in your handwriting, which we have already referred to, was that written in before the applicant took his oath, and in his presence?

A. Yes.

Q. And after the application was executed before you, what did you do? A. We then put the application aside for listing and forwarding to the Department in Washington.

Mr. Werner: Thank you.

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Cross Examination by Mr. Battle:

Q. Mr. Earle, just to make it perfectly clear, I understand that you have no independent recollection of this particular application? A. No, sir.

Q. Your testimony here is simply testimony from your custom and practice? A. That is right.

Q. You have had many thousands of applications you have testified to? A. That is right.

Q. And you are still in the Government employ? A. I am.

Q. In the same— A. In the same office.

Q. In the same office? A. Yes.

585

By Mr. Werner:

Q. Is that your invariable custom and practice? A. All the time, yes.

Mr. Werner: Mr. Bell.

The Court: Is there anything new that Mr. Bell is going to testify to with respect to this application?

Mr. Werner: Yes, sir. He is going to testify to the fact that a passport was issued and a passport was sent out to Chicago. This is his last appearance.

586

John O. Bell—For Government—Recalled, direct.

JOHN O. BELL, recalled, testified further as follows:

Mr. Battle: We have conceded the issuance of the passport itself.

Mr. Werner: There has been no concession on the record that I have heard and I think we will save time this way.

The Court: I think we will, if we are going to argue about it. I thought it might be conceded that he would testify the same with respect to this passport as he did with respect to the others.

587

Direct Examination by Mr. Werner:

Q. Mr. Bell, will you examine Government's Exhibit 3 before you—I refer to the second page of it—and state if you can, whether or not that was an application received by the Department in Washington? A. Yes, it is a passport application received by the Department.

Q. And was a passport issued on that application? A. Passport No. 451933, was issued on November 19, 1931.

Q. And will you explain the markings to his Honor and the jury? A. Well, the passport number in the upper right hand corner, the stamp indicating the issuance of the passport on that date.

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The Court: Isn't that exactly the same testimony as he gave with respect to the others?

The Witness: Yes.

The Court: And are you going to say the same thing with respect to this one?

The Witness: Yes.

The Court: Isn't that enough?

Mr. Werner: That is enough for the application.

Mr. Battle: I ask that this testimony also be taken under the same objection as the previous testimony.

John O. Bell—For Government—Recalled, direct.

The Court: Yes. The same ruling.

Mr. Battle: Exception.

Mr. Werner: And we should further like the stipulation that the passport was sent to the New York agency in the pouch of the State Department on November 19, 1931.

Mr. Battle: We make no question that the witness will so testify.

(Paper marked Government's Exhibit 20 for identification.)

Mr. Werner: I ask that Exhibit 20 be marked in evidence. 590

(Government's Exhibit 20 for identification received in evidence.)

Mr. Werner: And that this sending via pouch is indicated by Exhibit 20 in evidence, and further that the passport was never returned to the Department in Washington, as is the fact if the applicant or an authorized representative does not call for it at the agency. Do you so stipulate?

Mr. Battle: We don't question that the witness will so testify.

Q. Now, will you look at the first page of Government's Exhibit 3 in evidence and state, if you will, what that is? 591

A. This is the application for the renewal of the passport issued on the application, which is the second page, indicating that the passport was issued, was renewed in the Chicago passport agency on November 9, 1933, to be valid until November 19, 1935.

Q. Now I show you Government's Exhibit 2 in evidence, passport application in the name of Earl Russell Browder, and Government's Exhibit 6 in evidence, a renewal application for passport in the name of Earl Russell Browder, and ask you if you can state whether or not there were outstanding and valid at the same time passports in the

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John O. Bell—For Government—Recalled, direct.

name of Richards issued upon the passport application and renewal in that name and a passport in the name of Earl Russell Browder issued on the passport application in that name, all of which applications are in evidence?

Mr. Battle: We object to the question as incompetent—the witness's opinion on that. They speak for themselves, whatever it is.

The Court: The regulation is in evidence, is it not?

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Mr. Werner: Not yet, your Honor. That is going in evidence.

The Court: It will be put in, of course. I think the Court might take judicial notice that it is not. I will overrule the objection and give you an exception.

Mr. Battle: Exception.

Q. Will you answer the question? A. The files indicate that at the time there were valid passports in each of these names in existence at the same time.

594

Q. Will you state for what period of time both those passports were outstanding and valid? A. The passport in the name of Richards was valid from November 19, 1931, until November 19, 1933, and since it was renewed on November 9, 1933, it was valid until November 19, 1935.

The passport in the name of Browder was valid from September 1st, 1934, until September 1st, 1936, and was renewed in February, 1937, which made it valid for a further period of two years.

The Court: Until what date?

The Witness: September 1st, 1936—1938 I mean.

The Court: 1938?

The Witness: 1938.

John O. Bell—For Government—Recalled, direct.

595

By Mr. Werner:

Q. So that from the period from September, 1934, until November, 1935, both passports were outstanding and valid? A. That is correct.

Q. Now I call your attention to a statement in the passport application, Government's Exhibit 2 in evidence, in which the applicant states "None," after the words "My last passport was obtained from" and I further call your attention to the stamp, "Passport issued" on the Browder application, Government's Exhibit 2. Would the Department issue a passport to an individual if they knew at the same time that that individual had presently an outstanding valid passport in another name?

596

Mr. Battle: I object to that, if your Honor please, as highly incompetent, immaterial and prejudicial.

The Court: I will permit that question. The answer is perfectly obvious.

A. No.

Mr. Battle: Your Honor overrules the objection?

The Court: Yes.

Mr. Battle: I except.

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A. (Continuing) The Government would not issue a passport to a man who had an outstanding valid passport. It is contrary to regulations. •

(Papers marked Government's Exhibits 21 to 25, inclusive, for identification.)

Q. I show you Government's Exhibits 21 to 25, inclusive, for identification and ask you if they are copies of the regulations with respect to the issuance of passports? A. They are.

598

John O. Bell—For Government—Recalled, direct.

Mr. Werner: I offer them in evidence.

(Discussion between Mr. Werner and Mr. Battle.)

Q. Mr. Bell, Mr. Battle wants to know which of these regulations were in force in 1934 and 1937? A. The exhibit number 23 is a copy of the regulations that were in force during the period June 22, 1932, until March 31, 1938, except as amended by the amending Executive Order which is certified in Exhibit 24.

599

Mr. Battle: Those two, Exhibits 23 and 24, are those the ones that were in effect from 1932?

The Witness: They were in effect from 1932 on up to March, 1938.

Mr. Battle: We concede, of course, that these rules existed, and we don't make any question about the authenticity of the document here, and we have no objection to Exhibits 23 and 24, which relate to the period here, because that is what we are charged with here, for the use of the passport issued in 1934 and renewed in 1937. The others we object to on the ground of their not having any relevancy, incompetent, irrelevant and immaterial, and because they relate to passports issued on applications made prior to August 31, 1934.

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The Court: Objection overruled for the reason already given.

Mr. Battle: Exception.

Mr. Werner: I offer Government's Exhibits 21, 22, 23 and 24.

(Government's Exhibits 21 to 25, inclusive, received in evidence.)

Mr. Werner: Thank you, Mr. Bell.

Mr. Battle: No questions.

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WALTER G. BLACKBURN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Werner:

Q. Mr. Blackburn, what is your occupation? A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you been such? A. About five and a half years.

Q. And what is the nature of your work? A. I work in the technical laboratory in the Federal Bureau of Investigation at Washington, in the examination of handwriting, typewriting and other documentary examinations.

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Q. Of what college or university are you a graduate? And with what degree? A. I graduated from Cornell University in 1919 with the degree of Bachelor of Chemistry.

Q. Have you also engaged in additional studies to fit yourself for your work? A. I have.

Q. And what are those? A. I have studied textbooks of recognized authors on the subject of questioned documents. I have attended lectures of various handwriting experts, such as Dr. Wilmer Souder of the Bureau of Standards, and Mr. C. A. Appel of our own Bureau.

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Q. In connection with your work in the technical laboratories approximately how many handwriting specimens have you examined? Can you state? A. Well, I couldn't very well estimate that. I have examined well over 4,500 different cases involving many thousands of specimens of handwriting.

Q. Have you ever previously qualified as an expert on questioned documents and handwriting in courts of law?

A. I have.

Q. In this district? A. Yes, sir.

Q. And others? A. Yes, sir.

Q. I show you Government's Exhibit 4 in evidence, passport application in the name of Nicholas Dozenberg; Gov-

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ernment's Exhibit 16 in evidence, passport application in the name of George Morris, with an affidavit—

Mr. Battle: If your Honor please, I object to any testimony in regard to the Dozenberg or Morris applications on the same ground as has been stated before.

The Court: Objection overruled.

Mr. Battle: I except.

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Q. —and Government's Exhibit 2 in evidence, passport application in the name of Earl Russell Browder, and I ask you where and when you first saw them, and under what circumstances? A. These were submitted to me by the State Department on June 23, 1939, for handwriting examination.

Q. I show you furthermore Government's Exhibit 3 in evidence, passport application in the name of Albert Henry Richards, and ask you if that was submitted to you for examination? A. It was.

Mr. Battle: Also object to the application in the Richards' case.

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The Court: Overruled.

Mr. Battle: Except.

Q. Have you prepared enlargements, Mr. Blackburn, of the Richards, Morris and Dozenberg applications referred to in evidence? A. I have.

Q. And have you those with you? A. I have.

Mr. Battle: If your Honor please, in order to save time, we will concede that this witness will testify that certain pieces of handwriting on which the District Attorney was questioning him are all in the same handwriting, and that he will testify in his

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opinion that it is in the handwriting of the defendant Browder.

Mr. Werner: We won't accept such concession.

Mr. Battle: I thought I would save time.

(Photographic enlargements marked Government's Exhibits 26 for identification to 41 for identification.)

Q. Mr. Blackburn, is Government's Exhibit 26 for identification an enlargement of the first side of Government's Exhibit 2 in evidence?

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Mr. Battle: Pardon me a minute. If it please the Court, I wish to object in advance to each one of these enlargements upon the same grounds upon which I objected to the documents of which these are enlargements.

The Court: That is, of course, understood.

Mr. Battle: And I ask for an exception. I also object further on the ground that all this paraphernalia of enlarged documents before the jury is entirely unnecessary because we are willing to concede that this witness will testify that the handwriting, which the District Attorney is about to question him on, is all in one handwriting, and in the handwriting of Mr. Browder, which I assume is all he can be called upon to testify to.

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The Court: I think the government is entitled to put in its proof in its own way. I overrule the objection.

Mr. Battle: Exception.

A. Government's Exhibit 26 is a photographic enlargement of one side of the passport application of Earl Russell Browder.

Q. Of Government's Exhibit 2. A. Pardon me; Government's Exhibit 2.

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Q. And is Government's Exhibit 27 for identification a photographic enlargement of the reverse side of Government's Exhibit 2 in evidence? A. It is.

Mr. Battle: I don't believe it is necessary for me to renew my objection each time.

The Court: Certainly not. You have an exception.

Mr. Battle: Exception.

611

Q. Is Government's Exhibit 28 for identification a photographic enlargement of Government's Exhibit 14 in evidence? A. It is.

Q. And is the same true as to Government's Exhibit 29 for identification? A. With the difference that that photograph was made with a filter to partially remove the red stamp so the handwriting characteristics could be better seen.

Q. And is Government's Exhibit 30 for identification a photographic enlargement of Government's Exhibit 11 in evidence? A. It is.

Q. And is Government's Exhibit 31 for identification a photographic enlargement of Government's Exhibit 12 in evidence? A. It is.

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Q. Is Government's Exhibit 41 for identification a photographic enlargement of the signature Nicholas Dozenberg appearing in two places on Government's Exhibit 13 in evidence? A. It is.

Q. Is Government's Exhibit 32 for identification a photographic enlargement of certain lines appearing on Government's Exhibit 2 in evidence, Government's Exhibit 3 in evidence, Government's Exhibit 16 in evidence, and Government's Exhibit 4 in evidence? A. It is.

Q. Is Government's Exhibit 33 for identification a photographic enlargement of a page of Government's Exhibit 3 in evidence? A. It is.

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Q. Is Government's Exhibit 34 for identification a photographic enlargement of a page of Government's Exhibit 3 in evidence? A. It is.

Q. Is Government's Exhibit 35 for identification a photographic enlargement of a page of Government's Exhibit 16 in evidence? A. It is.

Q. Is Government's Exhibit 36 for identification a photographic enlargement of a page of Government's Exhibit 4 in evidence? A. It is.

Q. With the exception of this piece of paper which was pasted in front of the application when you took your photograph? A. It is.

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Mr. Werner: I refer to the words "Please forward passport in New York pouch Saturday night," appearing on Government's Exhibit 36 for identification.

Q. Is Government's Exhibit 37 for identification a photographic enlargement of a page of Government's Exhibit 4 in evidence? A. It is.

Q. Is Government's Exhibit 38 for identification a photographic enlargement of a page of Government's Exhibit 3 in evidence? A. It is.

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Q. Is Government's Exhibit 39 for identification a photographic enlargement of a page of Government's Exhibit 16 in evidence? A. It is.

Q. Is Government's Exhibit 40 for identification a photographic enlargement of a page of Government's Exhibit 3 in evidence? A. It is.

Mr. Werner: I offer in evidence Government's Exhibits 26 to 41 for identification.

Mr. Battle: Same objection.

The Court: Same ruling.

Mr. Battle: Exception.

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(Government's Exhibits 26 to 41 for identification received in evidence.)

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Q. Now, Mr. Blackburn, have you compared the handwriting on a passport application and renewal in the name of Richards, Government's Exhibit 3, and a passport application in the name of Morris, Government's Exhibit 16 in evidence, and a passport application in the name of Nicholas Dozenberg, Government's Exhibit 4 in evidence, with a view towards ascertaining and reaching an opinion as to whether or not they were all written by the same individual? A. I have.

Q. And have you reached an opinion? A. I have.

Q. And what is that opinion? A. They were all written by the same individual.

Q. Now, will you state to the jury your reasons for that opinion? A. I think I can point them out from these enlargements.

(Recess until 2:15 P. M.)

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(Afternoon session.)

WALTER J. BLACKBURN, resumed the stand.

By Mr. Werner:

Q. Mr. Blackburn, you have already testified that in your opinion the passport application in the name of Morris, Government's Exhibit 16; the passport application in the name of Richards, Government's Exhibit 3, the passport application in the name of Dozenberg, Government's Exhibit 4, were all written by the same individual. Will you explain to the jury and his Honor your reasons for that opinion. A. On the enlargements we have here I have

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marked with some red crayon certain of the characteristics which I took into consideration in my examination of the handwriting on these three applications. Take, for example, Government's Exhibit 36. The words "New York": there are several particularly characteristic things about those two words. The first is the manner in which the word "New" and the word "York" are connected together from the small letter "w" to the capital letter "Y"; the second being the relation between the capital letter "N" and the capital letter "W". In this instance it is written, as you will notice, with the capital letter "N" considerably taller than the capital letter "Y". Another characteristic in the writing is the manner in which the small letter "k" is formed at the end of the word "York". We find that the staff of the letter "k" is not made with a loop, but with a retracing stroke, which when it reaches the bottom of the letter then reverses its direction, and the final portion of the letter is made by a counter-clockwise curved stroke. That form of the small letter "k" is also apparent in the word "Stockholm" in the same exhibit. Here is another instance in the same exhibit where the words "New York" are written, and you will notice that the "w" is connected to the "Y"; the "Y" is considerably shorter than the capital letter "N", and the "k" is made in that manner in which I mentioned a moment ago. There are certain other characteristics, in which the figure "8", the manner in which that figure is written. The figure "8" here is written by the starting at the top of the stroke, making a double curvature, and instead of ending the stroke in an upward direction, it is curved back over to the left. That is, it starts at the left, making the figure and curves back over to the left, completely closing up the top loop on the figure "8". We find also certain other characteristics in this writing such as the small letter "c" which is made with the loop not very well closed; that is the "c" is made by the stroke coming forward and slant-

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ing to the right and retracing that to join with the next letter. In the small letter "o" we find in making the "o" it is finished with a small almost horizontal loop at the top of the letter. The first stroke in the "o" comes up more or less vertically. The "o" is finished by going back over to the left, with that vertical loop completing the "o". It is a little more apparent in the small letter "o" in the word "Dozenberg."

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On the second page of that application which is designated as Exhibit 37 we find some of the same characteristics, such as the figure "8" in which the figure starts at the top, making the "8" and then curving back over to the left to complete the figure. We find certain other characteristics such as trailing off of the stroke after the final letter in a word, such as in the word "medium" and in the end of the word "none" and the word "spare". We find also the small letter "n" is made in a very open fashion; that is, the retraced stroke is not a retracing, but it is an opening, forming a sort of a "V" formation, that characteristic occurring in nearly every instance in which it is written. Take Government's Exhibit 35 which is the first page of the application of George Morris: We find

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here again the words "New York" in which the "w" is connected to the "Y" in the same characteristic manner in which it was connected in the previous exhibit that I mentioned. We find also that the "Y" is again shorter than the capital letter "N", and the small letter "k" at the end of the word "York" is made with the same motion. In the figures "1891", here again we find that figure "8" formed in the same manner in which it was formed on Exhibits 36 and 37. We find the small letter "o" likewise made in the same fashion, with the first stroke coming to the top of the letter and then the letter being completed with that small horizontal loop going over to the left to complete the letter before connecting with the second. Here it is again in the word "Christopher" and in the word

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"Morris" up on the first line. We find in the word "none" the small letter "o" made in the same characteristic manner, and likewise even the small letter "n" made with the very open portion there appearing as a "V". We find the long trailing stroke at the end of the writing, such as in the word "none", in the word "Lawrence". Certain other characteristics appear here. In the capital letter "E" the "E" ends with a small loop at the bottom of the letter before connecting with the next letter in sequence. That also appears on Government's Exhibit No. 36 in the word "Estonia". We find that after the "E" is made there is that small loop at the bottom of the letter, which is characteristic of this particular writing. On Government's Exhibit 39 which is the second page of the George Morris application we again find this characteristic appearance, such as the figure "8", the words "New York", with the "w" connected in the same characteristic manner, with the "Y" considerably shorter than the letter "n", and the letter "k" again made in the same manner. We find these characteristics appearing twice on this page.

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On Exhibit No. 40, which is the first page of the Richards application, here again we find similar writing characteristics appearing such as here in the figure "8". We find in the word "none" the letters all made in the same characteristic manner. We find the "n" made in that open fashion, as I explained a moment ago. We also find the ending of the "n" trailing off in a long ending stroke, such as in the word "none" there. In the word "Oshkosh", and the word "Richards" on the third line.

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Q. Mr. Blackburn, with respect to the word "none" written a line or two above that, was that written in the same handwriting? A. No, that is not in the same handwriting. That is in another handwriting.

On Exhibit 38, which is the second page of the Richards application, here we find the words "New York" again written with the same characteristic connection between

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the letter "W" and the capital letter "Y". Also we find again the "Y" is considerably lower than the capital letter "N", although in this instance a printed letter "N" has been used. We find in this word "none" the same characteristics appearing as before, with the "o" made by finishing it with that horizontal loop. In this case there is a closed loop at the top of the letter; and the letter "n" made with the open formation such as a "V". We also find these trailing endings such as with the word "none", where the "e" trails off to the right. We find that same condition here in the word "Brown". We find it in the

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signature Richards. One of the characteristics I mentioned earlier about the small letter "e": you find that occurring in all these writings here. In the word "Musician" it occurs in similar fashion to the other applications.

Q. Mr. Blackburn, are you mentioning every single characteristic of the handwriting? A. I am not attempting to do so. I mean, it would probably take too long or be too boring to do so. I am pointing out characteristics which occur throughout these writings; not all of them, but some of them, upon which I base my opinion when making the examination.

630

Q. Have you also examined the originals under microscope? A. The examinations were all made from the originals. On Exhibit No. 33, which is the second page of the Richards renewal application, we find these characteristics again appearing. In the words "New York", it is again written with the same characteristic connection between the "w" and the "Y"; also the "Y" being considerably lower, shorter than the capital letter "N". The final "k" is written in similar manner. There are also other characteristics in those writings, such as the small letter "r", the capital letter "R". These and other characteristics which I may not have mentioned assisted me in reaching the conclusion that these were all written by the same individual.

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Q. Now, Mr. Blackburn, have you also examined the signature on the petition for naturalization in the name of Nicholas Dozenberg, and on the naturalization certificate in the name of Nicholas Dozenberg, Exhibits 13 and 14, in evidence, respectively, with a view towards ascertaining whether the handwriting is in the same handwriting as on the Dozenberg passport application, Government's Exhibit 4 in evidence? A. I have.

Q. And have you reached a conclusion as to whether or not they were both written by the same individual? A. I reached the conclusion that they were written by different individuals.

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Q. Will you tell his Honor and the jury the reasons for your opinion? A. We have on Government's Exhibit 36 two instances where the name Nicholas Dozenberg appeared. We have on Government's Exhibit 41 two signatures of Nicholas Dozenberg which appear on the petition for naturalization and on Government's Exhibit 29 the signature which appears on the duplicate naturalization certificate.

I have marked a certain point of difference occurring between these signatures appearing on Government's Exhibit 36 and those on Exhibits 41 and 29. I may say that there is a difference practically throughout the entire writing. The first difference is in the capital letter "N". On Exhibit 41 you will notice that the stroke starts on the base line of writing, here on the dotted line, it goes upward to the left, coming down, forming a sharp angle at the bottom. The stroke stops and goes to the right, and retraces, ending somewhat below the base line of writing. That occurs likewise in the second signature appearing on Exhibit 41.

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On Exhibit 29 the beginning stroke of the capital letter "N" begins considerably to the right. In fact, it begins to the right of the second letter of the word, the small letter "i". It goes upward to the left forming a loop,

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dragging back to the base line of writing at a sharp angle and again going up to the right forming the letter "n" which in this case is connected to the small letter "i" by an elongated curve below the base line of writing.

In the signatures as appearing on Government's Exhibit 36 you will notice that the loop does not start at the base line of writing in the first instance, whereas it does in the second. And in the first instance it starts about half way up the letter forming a very wide loop. Likewise, a very wide loop is formed in the second signature, much wider than the loop appearing in Exhibit 29.

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After forming the letter the ending stroke of the capital letter "N" on Exhibit 36 forms a loop which curves upward to the left before connecting it up with a small horizontal stroke to the small letter "i", which is quite contrary and quite different from the manner in which the "N" connects with the small letter "i" on Exhibit 29.

We find the small letter "c" in Exhibit 29 is disconnected from the stroke ending the small letter "i". The stroke ends, the pen is lifted, and a large loop is placed to commence the small letter "c". That forms the "c" in more or less of a usual manner with the exception that it has a very large initial loop.

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You notice in the signatures on Exhibit 36 there is no loop appearing in the small letter "s". The letter "H" in Exhibit 29 is formed in a very open fashion—what we know as a counter-clockwise type of writing; that is, the letter is not formed by the usual method of retracing the staff of the letter to form the hump of the letter "h". That does, however, occur in Exhibit 36 where there is a definite hump on the letter "h".

The small letter "o", you recall the characteristic I mentioned in the small letter "o" on Exhibit 36 was that it had a horizontal loop at the top of the letter. The small letter "o" on Exhibit 29 does not have a horizontal loop. It is a small vertical loop, and the letter is left open at

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the top, the difference being entirely a different writing motion forming that letter.

The small letter "a" and the connection between the small letter "l" and the small letter "a" is entirely different and is quite contrary to the same characteristic in Exhibit 36. In Exhibit 36 in the upper signature you will note that the pen has been lifted and the small letter "a" formed in a more or less conventional manner. In the second signature the small letter "l" has been connected to it in the more or less conventional manner.

The signature on Exhibit 29, you notice that the stroke of the "l" comes below the letter "a" and very faintly traces right up through the right side of that letter forming its loop and then dropping immediately to the base line to form the letter "s" following. That is entirely different writing motion than employed on Exhibit 36.

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I could point out each and every characteristic on there, but some of the others which perhaps are most significant are the small letter "n", which is written in Exhibit 29 to give the appearance of a small letter "a" and not an "n", which is what we call a counter-clockwise writing; whereas in Exhibit 36 it is written in just the reverse manner.

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The small letter "b" in Exhibit 29 is formed with the large vertical loop, but ends with a small vertical loop. Whereas in Government's Exhibit 36 you will notice that the small letter "e" ends with not a vertical loop but almost a perfectly round loop at the conclusion of the letter before it is connected with the small letter "e".

Those were some of the characteristics which lead me to the opinion that the two are not written by the same person.

Q. Mr. Blackburn, would you state in your opinion that the words "Nicholas Dozenberg" on Government's Exhibit 36 in evidence, the enlargement of the passport application, was written in pictorial simulation of the signature

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"Nicholas Dozenberg" on Government's Exhibits 29 and 41 in evidence? A. There is more pictorial similarity to the signature on Exhibit 29 than there is to the signature on Exhibit 41. I pointed out, for instance, the capital letter "N" on Exhibit 29, which somewhat approximates the shape of the capital letter "N" on Exhibit 36, but it still differs from it. There is a general pictorial similarity to certain of the letters occurring in these two writings. The final letter "g", for instance, is somewhat pictorially like the final letter "g" in the signature on Exhibit 29, and yet when you get down into handwriting characteristics themselves the similarity does not exist.

Q. Is such a pictorial similarity in your experience usually the result of an attempt to duplicate a signature by one who is not familiar with handwriting characteristics?

A. It is what would be expected.

Mr. Werner: At this time, your Honor, I would like to read Government's Exhibit 18 to the jury, which is a stipulation with respect to the handwriting on the passport application in the name of Earl Russell Browder.

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The Court: All right.

(Mr. Werner read Government's Exhibit 18 to the jury.)

Q. Mr. Blackburn, have you also compared the writing on the baggage declarations Government's Exhibits 11 and 12 in evidence with the passport application in the name of Earl Russell Browder, which is conceded in certain parts to have been written by him, with a view towards ascertaining whether or not the writing on the baggage declarations referred to were written by Earl Russell Browder?

A. I have.

Q. And have you reached an opinion? A. I have.

Q. And what is that opinion? A. They were written by the same individual.

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Q. Will you state the reasons for your opinion, Mr. Blackburn? A. I have confined my marking of the baggage declarations to the signature Earl Browder appearing on Exhibit 30 and the signature Earl R. Browder appearing on Exhibit 31. Making a comparison of the signature Earl Browder on Exhibit 30 with the writing Earl Russell Browder on Exhibit 26, you find that the first characteristic, the capital letter "E" appearing on Exhibit 30 is written in a similar fashion to that on Exhibit 26. The letter "E" begins at the base line of writing, the stroke coming upward to the right to the top of the letter, at which point the direction changes and the two horizontal loops of the capital letter "E" are formed.

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Again we find the characteristic which I mentioned before, that is, the loop at the ending of the letter such as appears in each instance on each of these exhibits.

Another characteristic in the signature Earl Browder on Exhibit 30 is the small letter "r".

And the third characteristic is the small letter "l". Notice that in this instance the small letter "l" is written very small, hardly larger than the "r" and about the same size as the small letter "a".

On that signature on Exhibit 26 you will notice that the small letter "l" is written very small with respect to the rest of the writing although here it is slightly larger than the "a" and the "r".

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The signature appearing on Exhibit 27 you will notice that the "a" and the "l" are approximately the same size.

In the word "Browder" the capital letter "B" is formed in the same fashion as the capital letter "B" on Exhibits 26 and 27. Here the small letter "r" is connected to the capital letter "B" by means of a loop at the end of the capital letter "B".

The "o" contains that characteristic which I mentioned earlier with the horizontal loop at the top of the letter.

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The small letter "w" you will notice is written with the center portion of the "w" not coming as high as the extremes of the letter. Here we find that characteristic again appearing.

The final letter "r" is made similarly with the same motion in each instance.

On Exhibit 31 we find the same characteristic appearing in the word "Earl" where the small letter "l" is approximately the same size as the small letter "a" and the "r" is written considerably smaller than the small letter "a".

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The capital letter "R" in Exhibit 31 is similar in all respects to the capital letter "R" in Exhibit 27. We find again the small letter "r" connected in the same fashion and the small letter "r" at the end of the word likewise formed in the same manner.

This leads me to the conclusion that the two are by the same writer.

Q. Mr. Blackburn, have you also compared the standard in the admitted handwriting of Earl Russell Browder, the defendant, Government's Exhibit 2, the passport application in his name with the passport applications in the names of Richards, Morris and Dozenberg? A. I have.

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Q. And you have previously testified that it was your opinion that the passport applications and renewals in the names of Richards, Morris, and Dozenberg, were written by the same individual, have you not? A. That is right.

Q. Now, have you reached an opinion as to whether that individual was the defendant on trial here? A. The opinion reached is that those three applications in the names of Morris, Dozenberg, and Richards, and the renewal application in the name of Richards, were written by the same individual that wrote the Browder passport. Exhibit 2, is it?

Q. Yes. Will you tell his Honor and the jury the reasons for that opinion, Mr. Blackburn? A. Go back to some

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of the characteristics which I pointed out in connection with the three passport applications. You will recall that one of the characteristics or several of the characteristics I pointed out occurred in the writing of the words "New York" such as on Exhibit 36 with the "w" connected to the "Y", the "Y" lower than the "N" in the characteristic manner. We find on the Browder application, Exhibit 26, that same characteristic occurring. We find the "w" connected to the "Y" and the "Y" considerably lower than the capital letter "N". The final letter "k" is made in the same fashion.

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Take the small letter "c" which I pointed out in the writings in which we find them being written in exactly the same manner in Exhibit 26 in, for instance, the word "Wichita", and in the word "Wallace".

Likewise, on Exhibit 26, you will notice that the second "New York" appearing is written in a similar manner to the first and similar to those on Exhibits 36, 35, and 8.

Take the characteristics in the word "None" in Exhibit 26. Here we find that the small letter "o" made in the same characteristic fashion with the letter ending with that horizontal loop at the top of the letter, this small letter "n" written in the very open fashion giving the appearance of a letter "V".

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In the application in the name of George Morris I call your attention to the writing of the word "Morris" where it appears in several places on the first line and again on the third line as compared with the word "Morrell" where the first four letters are common to both words. In writing that combination first we find the capital letter "M" made similarly, that is, the first loop of the letter is very large. The second loop is very small. Here we find in the word "May" the first loop is very large and the second loop is very small. Also in the word "Morris". It is not quite so apparent in the first word "Morris" written there.

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You will also find this characteristic of the beginning stroke in certain capital letters like "M" and "N" where it starts low down and goes up to the top of the letter before forming the letter.

We find that same characteristic in the word "May" and in the word "Morrell".

The figure "8", which I pointed out in the previous applications, is written in the same fashion in Exhibit 26 whereby the top of the letter is closed up with the ending stroke finishing off to the left.

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Here we find the capital letter "E" ending with that small loop at the bottom of the letter as I mentioned before.

In Exhibit 40 I call your attention to the word "Six" and to the word "Six" appearing in Government's Exhibit 26. In each instance the word is written in the same fashion and the same peculiar formation of the "x" is written in each instance whereby the crossing of the letter "x" is much more horizontal than normally written and is evidently characteristic with the writer.

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We find the use of this type of capital letter "S" in Exhibit 27 where the letter is written in the fashion of an enlarged small letter "s" with not the extra loop at the top of the letter. That type of "S" appears in these other applications—in the Morris application, for instance, in the abbreviation for the word "Street", which is on Government's Exhibit 35; and on Exhibit 39 in the word "Scar". You will also find that same characteristic in the applications in the name of Dozenberg in the word "Stockholm", and I believe it also occurs on the second page on Exhibit 37 in the word "Stein".

As a rather graphic illustration of how certain of these characteristics such as appear in the word "None" follow out throughout the four applications, I have prepared enlargements of those words appearing in the four applications. You will notice that in each instance the characteristic of the small letter "n" and the "o", the "e",

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the trailing off of the letter, elongated in most instances of the right, appearing similarly in all respects each time it is written.

Here we have of course a capital letter in certain instances which is not comparable with a small letter, the two words "None" as written in the Browder application, Exhibits 26 and 27, and you will notice that he has two ways of starting the small letter, "n" in the word "none". Sometimes it starts at the top and sometimes it starts low down, bringing it up to the top before forming the letter. Here in the Richards' application we find that same thing occurring. In one instance it starts at the top and in the other instance it starts low down. Even though these are capital letters in the Morris' application, we find the same occurs. They start high in one instance and low in the other. In the Dozenberg application, two instances, while one is a capital letter, the letter starts at the top; whereas in the other instance it starts at the bottom.

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Mr. Werner: You may cross-examine.

Cross Examination by Mr. Battle:

Q. Mr. Blackburn, you are connected with the Federal Bureau of Investigation? A. Yes, sir.

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Q. And what is your position there? A. I am a special agent, sir.

Q. You are regularly employed there? A. Yes, sir.

Q. You have no other employment? A. No, sir.

Q. You are a salaried employee? A. Yes, sir.

Q. And when were you first requested to take up this matter about which you have been testifying? A. This particular case?

Q. Yes. A. These specimens were first—

Q. When were you first consulted about the case itself? How long ago? A. I believe it was on the 23rd of June.

Walter J. Blackburn—For Government—Cross.

Q. 23rd of last June? A. That is right, sir.

Q. You began your work on the case about that time?

A. Yes, sir.

Q. When did you begin making these enlargements? A. Not until I knew I was to be called upon for testimony.

Q. And when was that? A. I can't recall exactly, sir.

Q. Give us your best recollection? About when was it?

A. Oh, it was probably in October or November.

Q. Of last year? A. I don't recall exactly.

Q. How many enlargements have you made here? A. I believe there are 19 or 20.

Q. Altogether? A. I believe so.

Q. And what are their dimensions? A. 40 by 60, the large size.

Q. How long have you been working on those? A. I don't understand quite your question.

Q. How long have you been working in preparing these enlargements? A. It took probably a day or so to prepare.

Q. And how long ago was that done? A. That was done about two weeks ago.

Q. How long have you been devoting your time exclusively to this case? A. In total? I couldn't answer that.

Q. How long have you been devoting your time exclusively to this case? A. I couldn't answer that.

Q. Can you give me your best recollection? A. I would have no way of judging that at the moment.

Q. Three months? A. Not consecutively, no.

Q. You said you were consulted first in June. A. That is right.

Q. And you began making these enlargements about October or November, didn't you? A. Yes.

Q. Well, can you tell us about how many months you have devoted to this work?

Mr. Cahill: If your Honor please, the question, of course, the witness finds himself unable to answer

John O. Bell—For Government—Recalled, cross.

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because it assumes that at one time he was exclusively devoting his time to this work. If counsel is going to stress the word "exclusively" I submit he should lay a foundation.

Mr. Battle: My last question did not contain the element of exclusiveness.

Q. I am asking you how much time you have devoted to this work according to your best judgment? A. I couldn't answer that because I have worked on it at different times and I have no way of totalling up the total amount of time.

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Q. The Federal Bureau of Investigation I see from that heading is a Bureau of the United States Department of Justice? A. That is right.

Q. That is a department of which the Attorney General is the head? A. That is right.

Q. And Mr. Cahill is a part of that department? A. I believe so.

Mr. Battle: That is all.

Mr. Werner: Thank you very much.

Mr. Cahill: The government rests.

Mr. Battle: There are a few questions I would like to ask Mr. Bell.

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JOHN O. BELL, recalled.

Cross Examination by Mr. Battle:

Q. You recall that when you were testifying yesterday I questioned you about an application for a passport made by Mr. Browder in September, 1938, and his Honor made a statement that he thought enough had been put in the

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John O. Bell—For Government—Recalled, cross.

case to establish the fact that an application was made at that time.

The Court: That is not quite my recollection. I made some kind of statement and asked you if it was not enough, and it is my recollection that you said it was.

Mr. Battle: That is correct, as to the application.

Q. Now, I am going to ask you if there was a passport
665 issued.

Mr. Cahill: I object to that as immaterial.

The Court: Sustained.

Q. Was a passport issued on that application?

Mr. Cahill: I object to that.

The Court: I sustain the objection and give you an exception.

Mr. Cahill: Thank you, Mr. Bell.

The Court: We will take a recess until Monday morning at half past ten in this room.

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(Adjourned to Monday, January 21, 1940, at 10:30 A. M.)

New York, January 22, 1940,
10:30 o'clock, A. M.

(Trial resumed.)

(Conference at the bench between Court and counsel.)

The Foreman of the Jury: Your Honor, one of the jurors got one of these cards (handing postcard to Court).

Motions to Strike Out Certain Exhibits.

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The Court: I also got a similar card. I don't think there is any use in paying much attention to it. I am much obliged to you for calling it to my attention.

(Further conference at the bench.)

Mr. Battle: I have some motions.

The Court: Do you want to excuse the jury?

Mr. Battle: Yes.

The Court: Well, before that you better rest, then.

Mr. Battle: The defense rests, if your Honor please, and I have a number of motions I would like to make. It will take some little time.

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The Court: I will excuse the jury, then, until after the motions. You might wait in the jury room. (Jury retired from the courtroom.)

Mr. Battle: If your Honor please, before formally closing, I should like to offer on the cross examination of Mr. Bell the passport that was issued in 1938.

The Court: I will make the same ruling with respect to that as I formerly made.

Mr. Battle: May I have that marked for identification, your Honor?

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The Court: Yes.

Mr. Battle: Take exception.

Mr. Cahill: That is the application?

Mr. Battle: The passport itself.

May I ask, if your Honor please, that these motions be considered as being made technically at the close of the case for the Government and then repeated after the defense rests.

The first motion is this, if your Honor please: there was offered by the prosecution several pamphlets containing different rules and regulations promulgated by the President and by the Secretary

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Motions to Strike Out Certain Exhibits.

of State. They were, as I recall, Government's Exhibits 21, 22, 23, 24 and 25. I would move to strike out from those exhibits those rules and regulations promulgated by the Secretary of State. The different pamphlets contain rules and regulations promulgated by the President and also by the Secretary of State. We claim that the Secretary of State had no power, that the power to make rules and regulations in this regard was not delegated to him, and that he had no power to make those rules and regulations; and therefore we ask that they be stricken out.

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The Court: I don't know what particular rules you refer to.

Mr. Battle: Take first Exhibit 21; that is Executive Order No. 7856. I don't believe that contains any rules and regulations promulgated by the Secretary of State. Yes, this does. Government's Exhibit 21 does contain Department Order No. 749 by the Secretary of State regarding passports and applications for passports, which is part of Government's Exhibit 21.

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The Court: What does it provide in so far as any issue in this case is concerned?

Mr. Battle: Well, there are several rules, several pages of rules, in regard to the surrender of old passports, transmission of passports to applicants, period of the validity of passports, authorization of clerks of courts to retain fees, return of passport fees. I think the material parts here are in regard to the surrender of old passports and the transmission of passports to applicants. And our contention is that that is not a matter which could be delegated to the Secretary of State.

The Court: I still don't quite understand how any of those rules which you have specifically re-

Motions to Strike Out Certain Testimony.

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ferred to has any particular relevancy so far as this case is concerned. However, I will deny the motion and give you an exception.

Mr. Battle: Give me an exception.

May I consider the same motion made as to others, and I will specify on the record just what they are.

Taking Exhibit 22, Departmental Order No. 433-A, pages 12 to 16; inclusive, they are orders made by the Secretary of State, Frank B. Kellogg, when he was Secretary.

Then Exhibit 23, Departmental Order No. 538, it being an order made by the Secretary of State regarding passports and applications for passports under Henry L. Stimson.

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Exhibit 25, Departmental Order 538, pages 15 to 19. That I think is the same order, and I ask that all of those orders and rules purporting to be promulgated by the Secretary of State, to which I referred, I make a separate motion as to each one, and take exception to your Honor's ruling.

And Mr. Bell, on question at page 191 of the minutes, testified concerning the question of having two passports at the same time. Later on he testified that the Department would not issue two valid passports at the same time. I took objection to that, and exception was taken, and I would like to move to strike out his previous testimony along that same line.

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The Court: Denied.

Mr. Battle: Exception.

Now, if your Honor please, I beg to repeat and renew the motion made at the beginning of the case, that the Court declare that all evidence relating to the Morris and Dozenberg applications and passports be considered illegal and incompetent, and be excluded; and I now make that same motion coupled

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Motions to Dismiss Indictment and Acquit the Defendant.

with a motion to strike out all testimony relating to those applications and to those passports, on the grounds stated in that motion.

The Court: Denied.

Mr. Battle: Exception.

I renew the motion, if your Honor please, on the ground that the use set forth in the indictment, the use of the passport set forth in the indictment, is not the use contemplated in the statute, Section 220.

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.In addition to the previous grounds, I move to dismiss on the ground that the Government has failed to prove that the defendant used a passport to gain entry into the United States in 1937 and 1938. It clearly appears from the testimony of George German, Immigration Inspector (pages 213-217), that it is his duty to examine all persons who are aboard the boat which is in the New York Port "to determine whether or not they are citizens, and if they are aliens, to determine their admissibility."

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When a passport is presented to an inspector by an American citizen, it is not for the purpose of gaining entry, but merely to establish his citizenship. The right of a citizen to enter is not determined by the inspector at the port. The right of a citizen to enter exists regardless of passports, birth certificates, or any other forms of identification. An American citizen can enter the United States without any form of identification providing his citizenship is known.

The Inspector of Immigration only exercises his judgment concerning the admissibility of the person involved where that person is an alien. Therefore when the passport was presented to him by the defendant it was only for the purpose of establishing his citizenship, and not to convince him that he should permit the defendant to enter the United

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States. This is further indicated by the statement of the inspector to the effect that citizens are not compelled to present passports to establish their citizenship, but can use birth certificates, naturalization certificates or any other means of identification.

We submit, therefore, that it is clear that the defendant did not use a passport to gain and secure entry into the United States, that it was not a proper passport use. For that reason we move to dismiss the indictment and for the acquittal of the defendant.

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Now we renew the motion to dismiss the indictment and for an acquittal on the ground that the indictment does not set forth with sufficient certainty or definiteness any statement upon which an allegation of falsity can be predicated. We make that motion on the same ground as the motion to that same effect which was made at the beginning of the case, and we now renew it as being made at the close of the case for the Government and the case for the defense.

The Court: Denied.

Mr. Battle: We renew the motion made at the beginning of the case for the Government on the ground that there was no criminal intent. In this respect I move to dismiss on the ground that the Government has failed to prove that the defendant wilfully and knowingly used the passport to gain and secure entry into the United States. The Government has failed to prove that the defendant had a criminal intent at the time that he presented the passport to the immigration inspector in 1937 and 1938. The Government has failed to prove that the defendant knew that the passport which he obtained was so obtained by reason of false statements, that he knew he needed a passport to gain entry into

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Motions to Dismiss Indictment and Acquit the Defendant.

the United States, that he intended to and did use his passport for the purpose of entering the United States, knowing that it was unlawful for him to do so.

The law presumes that a citizen knows the law, and so it must be presumed that the defendant knew that he did not need a passport to enter the United States. Thus it cannot be supposed that the defendant would have presented a passport if he knew that such was not necessary and if he knew that his passport was a bad one. It must be clear that the defendant had no criminal intention at the time he showed his passport to the immigration inspector. For a man who was bent on a criminal act, his conduct was amazingly open and fair.

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The Government's case is fatally defective in that it lacks the most essential ingredient of the entire case, namely, the criminal intent of the defendant at the time of the alleged act. There is no proof that there was a knowing and wilful use to gain entry.

The Court: Denied.

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Mr. Battle: I make the same motion to dismiss the indictment and for the acquittal of the defendant on the ground that it appears by the indictment and subsequently by the evidence which has been offered, that the renewal of the Browder passport of 1934 was in effect an application for a new passport; that in the application for the renewal it appears that the reference to the original passport and to the application on which it was granted was stricken out; so that on the application for renewal, it was a new application for a new passport, and in that new application there is no reference to previous passports, and therefore no allegation of any false statement.

Motions to Dismiss Indictment and Acquit the Defendant.

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I also call your Honor's attention to the following considerations: I move to dismiss on the ground that the passport which the defendant is charged with having used in 1937 and 1938 was not issued to him by reason of any false statement made by him. It appears from the testimony of Elma V. Waldron, agent of the Department of State, at pages 159-170 of the record, that the passport originally issued to the defendant expired on September 1, 1936, thereby losing all force and effect; that a renewal application was executed by the defendant on February 2, 1937, and that there were no false statements made therein; no statements alleged to be false made therein; that the passport was renewed without reference to the old application, and as a matter of fact, neither the original application, the original passport, nor the renewal application was submitted to the Department of State for them to determine whether the renewal passport shall be granted; and that although the application form contained a statement to the effect that the application and passport were submitted for the Department's consideration, in the renewal application executed by the defendant, Mr. Browder, such statement was deleted by Mr. Waldron, by drawing a line through it.

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It is clear and it cannot be disputed that the passport which the defendant allegedly used in 1937 and 1938 was a new passport and in fact a passport which had been issued by reason of the application executed in 1936, and not because of the application executed in 1934.

On that ground I move to dismiss the indictment and for the acquittal of the defendant.

The Court: Denied.

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Motions to Strike Out Certain Testimony and Exhibits.

Mr. Battle: Now, to those motions, if your Honor please, I would ask that there be added the following motions relating to evidence, as to the Morris and Dozenberg applications and passports: that the evidence constitutes attempted proof of other offenses; on that ground in addition to the other grounds, I move to strike out the evidence.

The Court: Denied.

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Mr. Battle: I except. Now then, if your Honor please, I make the following motions for the striking out of testimony. I move to strike out the testimony offered and the exhibits introduced by the Government concerning Dozenberg's passport on the following grounds: (1) that they tend—that is the testimony and the exhibits—tend to charge and prove separate and distinct offenses barred by the Statute of Limitations; (2) that they are too remote to have any value of a probative nature whatsoever; (3) that they are highly prejudicial and thereby deprive this defendant of an opportunity for a fair trial, and violative of his constitutional rights; (4) that they are not admissible under the rules of evidence, nor do they fall within the exceptions of any of the decisions which permit the introduction of proof of other offenses; (5) that they are not within the issues raised by the indictment and have no relation whatsoever to the crime for which the defendant is now on trial.

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The Court: Denied.

Mr. Battle: Exception. I also move, if your Honor please, to strike out the testimony offered and the exhibits introduced by the Government concerning the Morris passport on the following grounds: (1) that they tend to charge and prove separate and distinct offenses barred by the Statute of Limitations; (2) that they are too remote to have

Motions to Strike Out Certain Testimony and Exhibits.

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any value of a probative nature whatsoever; (3) that they are highly prejudicial and therefore deprive this defendant of an opportunity for a fair trial, and violative of his constitutional rights; (4) that they are not admissible under the rules of evidence, nor do they fall within the exceptions of any of the decisions which permit the introduction of proof of other offenses; (5) that they are not within the issues raised by the indictment and have no relation whatsoever to the crime for which the defendant is now on trial. On those grounds I move to dismiss and for an acquittal.

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The Court: Denied.

Mr. Battle: Then, if your Honor please, I move to strike out all the exhibits and the testimony offered in connection with the Richards application, as the issue before this Court was the one raised in the indictment and based on the alleged false statement "None" occurring in the blank after the words "My last passport was obtained from". The issue therefore before this Court is whether or not this defendant obtained a last passport. The obtention of this passport is the crux here, the issue, and it is not the application itself, or any other proof leading up to the obtaining of the passport. For the purpose of this case there would be no difference in point of law as to whether the last passport was obtained in the name of Richards or Browder. The question was, did the defendant obtain a last passport? In this case, particularly in view of the fact that the defendant conceded that he had obtained a last passport, the proof which the Government introduced directed to the manner in which such last passport was obtained was highly prejudicial. In view of that fact the defendant moves to strike out all the testimony leading up to

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Motions to Dismiss Indictment and Acquit the Defendant.

the obtaining of the Richards passport on the same grounds assigned to the previous motions with respect to the Dozenberg and Morris passports.

The Court: Denied.

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Mr. Battle: I further move, may it please the Court, to dismiss the indictment and for the acquittal of the defendant on the ground that the indictment is vague, indefinite and does not apprise this defendant of the nature of the charge with which he was to be confronted at this trial, and is therefore violative of his constitutional rights. In this connection the indictment charges that he had made a false application for passport No. 145182 on or about August 3, 1934, under the name of Earl Russell Browder, "which said passport thereafter was renewed at a passport agency of the Department of State at New York City, New York, on or about February 2, 1937." The Court will take judicial notice with reference to the laws regulating the issuance and the renewal of passports, which provide that a passport can be renewed only upon the making of a separate and distinct application for that purpose. In view of the fact that the indictment charges necessarily the making of two applications, and refers to false statements contained in only one, it is the contention of the defendant that the allegations with respect to falsity in the first application, in light of the fact that the use to which the passport has been made was predicated upon a passport which came into being by virtue of the second application, could therefore not be violative of Section 220 of Title 22, of the United States Code. The pleading in this respect is vague, uncertain and indefinite, and the defendant is therefore deprived of his constitutional rights.

696

The Court: Denied.

Motions to Dismiss Indictment and Acquit the Defendant.

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Mr. Battle: Exception. I further move, if it please the Court, to dismiss the indictment on the ground that a holding by this Court in construing Section 220 of Title 22, United States Code, to the effect that a presentation of a passport by a native born American, who is a citizen of the United States, for the purpose of entering the United States, would be violative of his constitutional rights, and the construction of the statute in that light would be insofar as this defendant is concerned, and the use to which he is alleged to have put the passport in issue, violative of his constitutional rights.

698

The Court: Denied.

Mr. Battle: Exception. I move to dismiss the indictment and for the acquittal of the defendant on this ground, that since the statement on the application beginning "My last passport was obtained from" and ending "for cancelation" is clearly susceptible of the meaning that the defendant had no passport for cancellation at the time of his application in 1934. The Government's failure to establish that the defendant had such a passport at that time requires the dismissal of the indictment.

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The Court: Denied.

Mr. Battle: I further move to dismiss on the ground that the Government has failed to establish that it was induced to issue the passport by reason of the alleged false word "None". On the contrary, it has been established by the Government's own witnesses that the Government had been put on notice at least ten years ago, in 1929, as to the previous action of the defendant with relation to passports, so that when it issued the passport in 1934 the Government was presumed to have knowledge, if it did not have actual knowledge, and the passport was not issued by reason of the word "None".

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Motions to Dismiss Indictment and Acquit the Defendant.

The Court: Denied.

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Mr. Battle: Exception. I now move to dismiss the indictment and for the acquittal of the defendant on the ground there is no proof that the defendant was in possession of a passport when he made the application for a passport on August 31, 1934; that certainly at the time of the renewal on February 2, 1937, no other passport was outstanding; and furthermore, there is nothing in the statute or the rules of the President promulgated thereunder which proscribes the simultaneous existence of two passports; that it appears from the evidence that when the defendant used his passports in 1937 and in 1938, that was the only passport outstanding in his name or possession, so that it must be found as a matter of law that the defendant did not make use of any false passport wilfully and knowingly on those occasions.

The Court: Denied.

702

Mr. Battle: I make the same motion for the same relief upon the ground that the indictment for an otherwise perfectly legitimate alleged passport use, solely because the passport was allegedly secured by reason of an allegedly false statement, is barred by the statute of limitations where, as in this case, the making of the allegedly false statement and the securing of the passport occurred beyond the period of limitation.

The Court: Denied.

Mr. Battle: In that connection I renew, if your Honor please, the motion made at the opening of the case for the dismissal of the indictment and for the acquittal of the defendant on the ground that the offense is barred by the statute of limitations.

The Court: Denied.

Mr. Battle: Exception.

Motions to Dismiss Indictment and Acquit the Defendant.

703.

I further make the same motion, if your Honor please, on the ground that Section 220 of Title 22 of the United States Code applies only to aliens or persons not owing allegiance to the United States. The defendant here is concededly a native born citizen and does not come within its provisions.

The Court: What section are you referring to?

Mr. Battle: Section 220. It is the section under which the indictment is drawn. Our contention is that that relates only to passports issued to aliens, passports which are issued to persons who have no right to them, aliens or persons who have no allegiance to the Government.

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The Court: Well, I am afraid I don't quite follow you on that. I had supposed that a passport could only be issued to a citizen.

Mr. Battle: That is what I say. The prohibition there is against passports being issued to aliens or applications for passports being issued to aliens. If your Honor will recall the language of that section, it applies to passports which are contrary to the laws regulating the issuance of passports, or to rules promulgated pursuant to those laws. Our contention is that that clause in that section clearly indicates and shows that it relates only to applications for passports to aliens; if a man makes an application claiming to be a citizen when he is not.

705

The Court: I understand. I will deny your motion.

Mr. Battle: Exception. And I make the same motion on the ground that the prosecution of the offense insofar as it is based upon proof of previous alleged crime, in obtaining passports in the names of others, if stricken from the record, there is left insufficient evidence of the defendant's guilt.

The Court: Denied.

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Summation by Defendant.

Mr. Battle: Except. I move to dismiss and for an acquittal on the ground that there is no law or rule authorized by law which required the defendant to state whether or not a previous passport had ever been issued to him, nor is there any law or rule authorized by law which required the defendant to submit the passport for cancellation.

The Court: Denied.

707

Mr. Battle: Exception. Then I move to dismiss the indictment and for the acquittal of the defendant on the ground that the evidence produced here by the Government is insufficient for submission to the jury on the question as to whether any offense was committed under this indictment.

The Court: Denied.

Mr. Battle: Exception. Your Honor will give me an exception to each ruling?

The Court: Certainly.

Mr. Battle: This is the passport of 1938. I would like to have it marked for identification.

(Passport No. 583689 marked Defendant's Exhibit A for identification.)

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(The jury returned to the Courtroom.)

The Court: I understand that the defendant wants to sum up his own case?

Mr. Battle: Yes. He prefers to sum up the case himself. I made that application to your Honor and your Honor has granted it.

The Court: I will permit him to do so, but I think he should understand that he has to confine himself to the evidence in this case.

(The defendant, Earl Russell Browder, summed up the case to the jury in his own behalf as follows:)

Mr. Browder: Your Honor, and Ladies and Gentlemen of the Jury: My request of the Court that I be permitted to sum up this case was in no

Summation by Defendant.

sense a judgment that I am a better lawyer or advocate than my distinguished counsel, Mr. Battle, and I want to say just in the beginning a word of appreciation for what I consider the most able, the most excellent handling of this case on my behalf by my chief counsel especially, and by his associates. I think he has done about all that could have been done to make the real issues appear out of the mass of evidence that has been presented.

My own qualifications to argue this case are that I am intimately familiar with the facts and that I have had a little training at law myself, holding a degree in law. True, it is a degree obtained from a correspondence school. 710

Mr. Cahill: If your Honor please, I don't like to interrupt at the outset, but it should be plain that matters not in the record should not be referred to.

The Court: That is quite correct.

Mr. Cahill: Your Honor, I don't like to interrupt, but at the outset we should make it plain that matters not in the record should not be referred to.

Mr. Browder: I think the first question that is probably in the minds of the jury is the question, Why didn't the defendant take the stand. 711

Mr. Cahill: That I will object to, your Honor.

The Court: Objection sustained.

Mr. Browder: I will not discuss it, therefore, if there is objection, although I am quite ready to discuss that question if it is a question which needs to be answered. But if it is understood and agreed that that question does not and cannot play any role in the minds of a single juror in arriving at any decision, I am quite content to leave it there.

In discussing the evidence my arguments are, of course, subject to correction by you as to the facts.

712

Summation by Defendant.

Your memory is quite clear on these considerations on the facts and evidence, and in my argument I am only relying on my own memory, as refreshed by reference to the minutes.

713

It is my belief that the real issues in this case have been obscured by a mask of irrelevant or trivial details, that in order to find the real issues we must first of all understand what are not the issues. There is no charge that the false passports upon which I am being tried in this case—there is no charge for which I am being tried here for the use of other names on passports. There is no charge that I have in any way secured rights that I am not entitled to, that any persons have been injured by any action of mine, nor has it been shown that any damage has flowed, directly or indirectly, from the acts upon which the two counts of the indictment are predicated. I am on trial for having entered the Port of New York with my own passport under my own name in the full light of the publicity of the New York press, of the newspaper reporters present, photographers flashing their bulbs and taking pictures, crowds gathered to see every detail of that entry. This is the crime. In so far as the evidence presented upon the indictment places the issues, in so far as the issues are not to be inferred from the situation in the world and in this country outside of this courtroom, outside of the evidence presented here, such issues must be explicitly delimited.

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The basic ones are: are there any facts or circumstances connected with the entry described in the evidence when I came into the Port of New York on April 30, 1937, and on February 15, 1938, with my own passport in my own name—is there any evidence which can transform those two entirely

Summation by Defendant.

715

normal and matter of fact events into crimes against the peace and dignity of the United States? That is the sole issue. If at any time in our argument it should seem to you that I am relying upon technicalities, I ask you to remember that the prosecution itself has presented a case compounded of technicalities. It is a thin web of technicalities, and everything of seeming substance in the case consists of matter which on its own merits would be excluded from consideration, but is brought in only on technicalities, and in facing a technical prosecution it is necessary to make a technical defense as well as a substantive one of law and evidence.

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Just to remind you from the language of the indictment itself that this is the sole issue—the two entries—the indictment says in two counts, “did use and attempt to use Passport No.” so and so, “in the name of Earl Russell Browder.”

The second count in the indictment says “did use and attempt to use this passport for the purpose of gaining and securing admission into the United States; against the peace of the United States and their dignity and contrary to the form of the statute”.

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Now let us review the facts of those entries. That is the starting point. We can very well start our argument with this. These facts are simple. Extraordinarily simple.

On the 30th of April, 1937, I entered the harbor of New York on the steamship Berengaria. I presented my passport to the Immigration Inspector as evidence that I was no alien. I presented a Customs declaration on the dock, cleared my baggage, and proceeded to my home and family.

On the 15th day of February, 1938, I similarly entered the Port of New York, on the steamship

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Summation by Defendant.

Aquitania, again presented my passport to the Immigration Inspector again presented a Customs declaration, and again rejoined my family.

These two incidents are the alleged crimes. Without these there could not even be a pretense of any prosecution on any of the evidence brought before you.

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Now let us put these two events under a microscope, so to speak, somewhat in the manner that our scientific witness with samples of handwriting the other day, although this time to try to determine something at issue in the case. These two acts of entrance have been described in the evidence with a wealth of detail that leaves very little to the imagination. We may analyze them from every angle and try to identify, to localize, to put our finger on them, on those features or aspects of the two acts of entry which might conceivably transform them into crimes, crimes that would call into action the great machinery of justice.

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First, perhaps, I, the defendant, whose entry is the subject of examination, perhaps I was not entitled to enter the Port of New York. Perhaps I was not entitled to enter the territory of the United States. Perhaps my right of entry was questionable. Perhaps that was the subject of possible dispute. No, that is not the case. Mr. Cahill himself on behalf of the prosecution has signed a stipulation that is in the evidence, setting forth that I am and always have been a native born citizen of the United States. As a citizen I had a right to enter the Port of New York or any other port. That right was an absolute one, an unchallengeable one. It could not be abridged or limited by any authority. The manner of defendant's exercise might be regulated by measures of public order, but only in so far as

Summation by Defendant.

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the absolute right to enter was not thereby infringed upon. In the act of entry, therefore, as an exercise of an absolute right, there is not and there cannot be the slightest taint of illegality. There is no such thing in law as the illegal entry of an American citizen into the United States. There is no such thing in law. And I am sure his Honor will so charge you before you deliberate upon this issue. There is no such thing as the illegal entry of a citizen. In those voluminous records, the ship's manifests that were introduced in evidence by the prosecution to prove beyond all doubt that I did in truth enter the United States, you can find interesting indications of this absolute right of citizens to enter the United States. Citizens are carefully listed separate from aliens. On the bottom of the list is clipped a warning in big black type which you will see when you examine those manifests, not to unduly delay the debarkation of citizens. Lists of aliens are accompanied by certificates of the examination by health officials that those named are not suffering from any specific diseases. But no such certificate is applied to citizens. Why? Because even if citizens suffered from the bubonic plague they could under no circumstances be excluded or denied entrance.

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The Immigration inspectors who have testified here, and testified very clearly and honestly, have each explained what is one of the essential points of the defense—that their only business with citizens is to distinguish them from the aliens, because it is only with the aliens that they have any business to transact. It is only with the aliens that the Immigration inspectors are concerned. If the act of entry is itself impermeable to any taint of illegality, was there any incident or feature of these particular

Summation by Defendant.

acts of entry which could be taken separately from the entry itself and shown to be illegal? Was it not the entry that was illegal, but some act in connection with the entry which was illegal? Look over the records. The Customs declarations are in evidence. Anything wrong there? Nobody pretends there was. Was there anything in fact secretive or hidden about the entries? Was anything concealed from these entries? Nothing whatever. On the contrary, evidence introduced by the prosecution has shown that these entries were highly publicized, newspaper reporters were gathered because of this entry, photographers were there to take pictures of this entry. They recorded everything, or sufficient to impress the events so clearly upon the minds of case-hardened port officials so that they clearly remember the details 19 and 32 months later. Surely a great deal of attention was concentrated upon the entrances at the time they took place. The prosecution has found nothing in the circumstances of the entries to single out, except this one thing, that the defendant did display his passport issued in his own name before the Immigration inspector as evidence of his citizenship, as evidence of the fact that the inspector had no business to transact with him, that he did not come within the category of persons whom the inspector was authorized to examine, to determine whether entry could be permitted or not?

By what theory can it be urged that this display of my passport in my own name to an Immigration inspector furnished the body of a crime, regardless of any question concerning the origin of the passport, to which we will come later? Did this display of a passport, to use the language of the indictment again, secure entry and admission into the United

Summation by Defendant.

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States for me? It did not. The Immigration inspector under no circumstances had the slightest authority to exclude me from entry, and the display of my passport merely informed the inspector that I was a person with whom he could not interfere, that his authority did not extend to me; and that information being correct, that information corresponding to the true situation, absolutely nothing had taken place which could be tainted in any way by anything that might have happened at any other time or place. I received nothing from the inspector of Immigration except the recognition that if he interfered with me he would be violating the law. I did not receive the right to enter from the inspector, for he held no rights and had no way to regulate those rights. I did not receive the entry from the passport; I received it from my status as a citizen, which is unchallenged here.

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Summing up the evidence on the specific acts named in the indictment, without which there is nothing to consider, namely, the entry into the United States on April 30, 1937 and February 15, 1938, with all the surrounding circumstances, including the presentation and display of the passport before the Immigration inspector, we must conclude that there is no wrongdoing, there is no deception, there is no fraud, there is no obtention of any right that could have been denied by anyone by any exercise of discretion, no taint of illegality of any kind can be found in those two acts, no inference or imputation of illegality can be drawn from any other acts at any other time and place. Therefore there can be no crime found to be committed by me on those days from the evidence presented here, or any evidence that could be presented.

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Summation by Defendant.

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Now if this basic proposition is established, that there can be no crime inferred from or predicated upon the act of entry of a citizen into his country, then the whole indictment and the evidence presented upon it falls; and that fact could be proved by citing a thousand legal decisions, it could be proven by citing the everyday evidence of men who go in and out of United States territory, by fishermen who go out beyond the three-mile limit to fish and come back. They don't have to have any special papers to re-enter. It can be proven by pleasure boats going in and out. No papers are necessary. They leave and enter the territory of the United States, and every one of such acts of leaving and entering is of exactly the same legal significance as leaving and entering with an ocean liner from Europe.

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If this is established, no further argument is necessary. The verdict of acquittal must automatically follow. If that proposition is rejected, if it is maintained that there are circumstances under which a citizen could be excluded, could be exiled from his country, then it becomes necessary to follow up our argument further to the next link in the chain of evidence, a long, complicated, flimsy thing, upon which the Government relies to link 1937 and 1938 with events in the past, in many instances the dim past.

This next link, when we go behind events of the two entries charged in the indictment, is the document displayed on the entries, that passport that was issued in 1934. Was it the passport issued in 1934 that was presented in 1937 and 1938? The prosecution has insisted that it was. But the prosecution itself has given the evidence that it was not. The

Summation by Defendant.

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evidence shows conclusively that the passport issued in 1934, issued to me in my own name, had become null and void, had expired, its validity had expired—

Mr. Cahill: I must object to this, because it seems clear that the defendant is arguing upon the law, which is for the Court.

The Court: That of course is true, Mr. Browder.

Mr. Browder: I would submit, your Honor, that this is not only a point of law, but a point of evidence which is properly a subject for the consideration of the jury.

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The Court: With all due respect to you, Mr. Browder, I am inclined to disagree with you. I think those questions of law, insofar as they are applicable to the case, have already been determined. Therefore you will confine yourself to the record in the case.

Mr. Browder: Yes, I am arguing on the evidence as presented.

The Court: I understand. All right.

Mr. Browder: That passport had the potentiality of being renewed. In fact it was renewed, as the evidence has clearly shown. It was renewed on February 2, 1937. It was renewed, as the evidence shows, upon the basis of a new application, the payment of a new fee, and in the new application it is not and has not been contended by the prosecution that there was any false statement.

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You have had that application before you. You have seen it. You can refresh your memory. That evidence shows that the renewal was made without reference to the original application of 1934. And this evidence you can very properly weigh and consider. In fact, the application for the renewal, you will find when you look it over, had a form on it—

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Summation by Defendant.

printed form—which anticipated that the renewal would specifically renew not only the passport but the original application together with the passport. But you will also see when you examine it that that form which anticipated such a thing was not used; it was stricken out from that form, and the act of striking it out was the act of a Government agent and not my act. This evidence presented by the prosecution itself contains the proof. If you will examine it you can test it yourself by looking at the document and comparing that document with the evidence that was presented; that the Government's agents themselves specifically excluded, by their own act, the renewal of the application, together with the renewal of the passport.

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The prosecution relies upon the theory that because this passport contains the same proof as 1934 and that it is composed of the same physical body, that therefore it is the same document with exactly the same attributes and connotations as the original. But determine whether that is so or not—

Mr. Cahill: Here again I must interrupt.

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Mr. Browder: That is a question of law, but it is also a question of fact to be presented by the evidence.

Mr. Cahill: I press my objection that the question is one of law and that the Court has ruled.

The Court: I think that is so, Mr. Browder.

Mr. Browder: I think, your Honor, that it is competent to discuss the evidence presented by the prosecution to determine as a matter of fact whether this evidence indicates that the renewal created a new document, or whether the renewal merely extended an old document. I think that is not only a question of law; this is also a question of fact. The prosecution has accepted it as a question of fact by

Summation by Defendant.

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presenting evidence on it in this case, and I think that therefore we must discuss this evidence before the jury.

The Court: I am afraid I don't agree with you.

Mr. Browder: Do I understand then that you request me not to continue my arguments on this point?

The Court: I would rather not put it that way. I can say that I think you should confine yourself to the record in this case, leaving the questions of law to the Court.

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Mr. Browder: Exactly what I thought I was doing, your Honor.

The Court: If the Court has determined those questions of law improperly, you have your remedy in another forum.

Mr. Browder: Of course, if at any time it is understood, ladies and gentlemen of the jury, that if I make any statement about the law, I do it with the understanding that you don't take the law from me. You take it from his Honor. I am not trying to lay down the law to you; I am trying to argue the significance of the evidence. And of course the significance of the evidence always has to be considered in the light of one's interpretation of the law. If I should argue wrongly, I think Mr. Cahill will have ample opportunity to refute me.

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Mr. Cahill: Not on the law.

Mr. Browder: And I am arguing on the evidence, and I maintain, if I may be permitted to sum this case so there won't be any more useless argument about it—

Mr. Cahill: I object to that. This is the third time—

The Court: I didn't want to get into any argument about it, though. It seems to me that this case

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Summation by Defendant.

should be summed up by the defendant and by the District Attorney on the evidence in the case. That is all I can say at this time. I don't want to have any argument between the defendant and the Court, and between the District Attorney and the Court, except it is absolutely necessary, which I don't think it is.

Mr. Browder: I agree entirely with your Honor, and I have at all times.

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The Court: Suppose you continue with your argument before the jury.

Mr. Browder: It is my contention that the evidence presented in the renewal application constitutes evidence of a break in the chain of the prosecution's argument. The law aspects of that you will get from the Court. You will take from me only, for whatever it may be worth, the arguments on the weight of the evidence.

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If it is found by the jury, despite the evidence under the law, that the documents presented in 1937 and 1938 were in truth the selfsame document issued in 1934, that will bring us back to another link further removed from the acts charged in the indictment, that is, to the application upon which the passport was issued.

As to the passport itself, there is no contention that it was illegally issued, or that it misrepresented the true status of the defendant. It was a passport in my own name, setting forth my status unquestioned in its form and content. It is to the application that the prosecution has gone with the claim that the passport itself was tainted by the false statement in the application, that false statement being the word "None" written into a blank following the printed words "My last passport was obtained from", although the phrase cited is not a

Summation by Defendant.

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question, and even if it were a question, the word "None" is not an answer to it as it stands in any event. As the prosecution contends, this meaningless series of words is susceptible of the meaning that it is a statement that the defendant had never before had any passport, that it was therefore false, and that such falsity induced the issuance of the passport.

If in your consideration of the case you must go as far back as the 1934 application, because you have rejected the other considerations, you will then be faced with the decision in judging the 1934 application, whether that statement "None" was a statement—that word "None" was a statement—whether it was false, and whether such falsity induced the issuance of the passport. The indictment, and the prosecution in presenting its case, has studiedly, systematically omitted all reference to the fact that the phrase "My last passport was obtained from" was only half a sentence. The other half, which was the phrase "and is submitted herewith for cancellation". It is highly significant that the prosecution suppressed the other half of the sentence in the indictment, has studiedly omitted reference to it in the presentation of the evidence. Why? The prosecution must have felt that a full citation of the sentence would weaken or even destroy the case; and that is the fact. When half presented, as in the indictment, that sentence is either meaningless or false. You can take your choice. But you have no other. Meaningless or false. But when the whole sentence is presented, you have three choices—meaningless, false or true. It is impossible to construe it as true when only half the sentence is cited, and that is why the prosecution cited only half of the sentence. But when the whole sentence is cited

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Summation by Defendant.

it is possible to construe it as a true statement and such construction would correspond to the obvious character of the statement on its face. Among the three possible interpretations when you cite the whole sentence, the interpretation that the answer "None" meant "I do not have any present passport to present for cancelation as I have destroyed it," that is the possible interpretation when you take it in the context of the full sentence. That interpretation is excluded from your consideration when you are given only part of the sentence.

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But even assuming, as will be strenuously argued—as must be strenuously argued by the prosecution, because this is the point upon which their whole case must be established, or completely fall—the prosecution's case hangs upon this completely. The defense case does not. But the prosecution's case stands or falls on this one point, and they must argue, therefore, the more strained and less obvious interpretation of that sentence.

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Assuming that you agree with the prosecution, there is yet no competent proof that such an answer deceived the Government, and therefore induced the issuance of the passport which otherwise would not have been issued. For that answer to have deceived the Government it must be shown that the Government otherwise had no knowledge of the previous issuance of any passport to the defendant. If the Government had knowledge it could not be deceived by such an ambiguous statement, and that the statement is ambiguous is unquestioned. To make it false it must be interpreted. I think even the prosecution only contends that it is susceptible of the interpretation that it is false, not that it is false on its face.

The evidence presented here has conclusively and unquestionably proved that the Government did

Summation by Defendant.

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have knowledge of previous passport issuance when it issued the 1934 passport, and that such knowledge was officially noted on a document presented by a prosecution witness in evidence here, the notation "Recorded in Fraud File as Suspect, 12-2-29", signed "Wright".

This was further confirmed by the prosecution's witnesses, although it is highly significant that these facts were not presented by the prosecution until they had been brought out on the following day by the very able cross-examination by Mr. Battle. But the re-direct examination of these witnesses further confirmed this fact and established it beyond all question. It was not refuted, not denied. It was assumed to be a fact by the prosecution itself in the re-direct examination of that shifty, forgetful witness Powers, brought forward by the prosecution as its own witness. There is no room for the slightest doubt that the Government had knowledge of the previous passport issuance prior to the 1934 application, that it had not considered the question serious enough to warrant prosecution, that it dropped the matter, that therefore it did not consider it serious enough to warrant the denial of a passport in 1934.

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This assumption is given additional weight by further facts that the 1934 passport, after expiration in 1936, was renewed by the Government on February 2, 1937, after it had more than two years additional time to check up and consider the question whether such a passport should properly be issued. In the fall of 1937 the Government extended the privilege of a passport by an amendment endorsed thereon personally by the chief of the Passport Division to include Spain, which it heretofore and specifically excluded from the document. In September, 1938, the chief of the Passport Division

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Summation by Defendant.

personally received the application for another passport, issued it to myself, and the offices of the State Department in Washington, as Mr. Bell, I think it was—

The Court: I think you are going a little bit beyond the record, Mr. Browder.

Mr. Browder: May I ask exactly how? I thought I had stuck very close to the record, your Honor.

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The Court: I don't think I need to remind you of the fact that the evidence with respect to that particular passport, to my recollection, has been excluded.

Mr. Browder: I was referring to the testimony of Mr. Bell, which was received, your Honor.

The Court: I may have misunderstood you then.

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Mr. Browder: I was referring to the testimony of the Government's expert witness, Bell, who, having no knowledge of this case or any particular facts concerning this case, did have knowledge of some circumstances concerning events which followed the acts charged in the indictment, which he placed into the record on the questioning of the prosecution. We were not able to bring out these things in their full implications because of objections, as you witnessed. But I again refer to the testimony of the witness Bell, and ask you to interpret that in the same sense as these other facts that I have just cited. I can't give you the exhibit in evidence for you to examine, but you have a right to infer that such evidence does exist, if it is necessary.

Every one of those three acts of renewal, extension and issuance of the passport privileges to me after 1934, two of which were made directly through the Chief of the Passport Division in Washington to me in person, these are additional proof, if proof is needed, that prior passports were no bar to the

Summation by Defendant.

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issuance of the 1934 passport itself, for if it was a bar in 1934, it was equally a bar in 1937 and 1938. Even this accumulation of overwhelming proof, proof that the Government had prior knowledge that it did not consider the matter of sufficient seriousness to warrant prosecution when the supposed offense was alive and current that the Government did not consider it sufficient to warrant the denial of a passport in February, 1934, February 2, 1937, on November 26, 1937 and on September 26, 1938. Even this accumulation of proof does not stand alone in the record. It is further buttressed by important circumstantial evidence from the Government's own witness, from persons in its employ. Even the information clerk, Miss Hayes, who guided me in filling out the 1934 application, she did it very courteously, as a good public servant, I must say, and she frankly stated that she has an individual recollection of that event after more than five years, that those few moments stand out clearly in her memory among the hundreds of thousands of such instances that she must have had in her own experience. But she says—and she explains it very logically—that she remembers that incident more than five years ago because she immediately recognized me when I made the application, when I filled out the application before her. She recognized me. Not that she had ever seen me before. She recognized me from newspaper pictures, from newspaper pictures.

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Now what is the significance of that, when the information clerk immediately recognized me from newspaper pictures when I walked in to fill out the 1934 application? Miss Hayes further explains she not only recognized my face and my name, she recognized the connection with a certain political organ-

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Summation by Defendant.

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ization. She did not name it, but you all know what it is. It is the Communist Party. She recognized me as the secretary of the Communist Party because of what she had read about me in the newspapers. And I think it was one of the jurors who in the examination made the remark that it would seem to him dishonest for one to deny that he had some prejudice or preconceived opinion about this case, because everyone has read in the newspapers about it, and everybody has formed some kind of an idea about it. But in 1934 Miss Hayes testified also that my face and name and public role were sufficiently known through the newspapers that she, the information clerk, immediately recognized them. Can anyone believe that such a recognition was not accompanied by an understanding that I had been abroad before? At least half of all the publicity surrounding my name has been connected with my trips abroad. Can anyone assume that I was recognized by someone who was dealing with business of trips abroad without also understanding that he was recognizing someone who had been abroad before. And if this applies to Miss Hayes, how much more, how much more does it apply to the higher officials through whose hands this document passed in 1934 clear up to the head of the Passport Division, who later personally dealt with me twice?

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We submit to you, ladies and gentlemen of the jury, that the evidence presented by the prosecution and brought out on the cross-examination of its witnesses is convincing, it is overwhelming, it is conclusive proof that prior to 1934 the Government had knowledge of prior passport issuance, that it did not consider the matter merited further action on its part, that it placed it away in the files for reference. It was therefore not deceived by the 1934 ap-

Summation by Defendant.

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plication. The statement, or word "None" in the 1934 application, even if it is given the interpretation that would make it false, which is not a necessary interpretation—even it were given that interpretation, could not have been effective in inducing the issuance of the passport because of the prior use of the Government. In any event the prior passports were not, and are not now, conceived to be a bar to the issuance of passport rights and documents, and so proven in 1934, 1937 and 1938.

Therefore, when we are forced step by step to go back to 1934 and the application, again we find that this thin web of technical material by which is attempted to bind together all these things, break down, and the evidence submitted by the prosecution is insufficient to prove its indictment.

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It has been and is consistently maintained and emphasized by the defendant from the beginning of this trial, as a matter of weighing the evidence by the jury, and the matters of the Dozenberg-Morris and Richards passports have no proper significance in weighing the evidence about the entries and the issuance of the passport in 1934, and that it violates the long-established rule. But since our position as a matter of law has been overruled by the Court, we cannot argue it here. We are left on this general question, with no remedy at law except such as, should it become necessary, may be later found in other instances. These matters, which we consider extraneous and prejudicial, are therefore before you despite our efforts, and we must deal with them as best we may. Frankly, I must say that this task is not pleasant. Absolutely we refuse—I refuse—to dwell upon these matters any more than is absolutely necessary for overcoming prejudice because I consider that they were introduced for

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Summation by Defendant.

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the purpose of creating prejudice, and that detailed answers would merely forward that purpose. Whatever may have been the legal aspects of the Dozenberg, Morris and Richards passports when they were current questions, the important point is this: that the Government—not I; the Government—demonstrated for ten years that it did not consider these matters important. As to the detailed evidence brought forward on these extraneous issues, all of it merely serves to cover the issues, to draw a red herring across the trail and divert your attention from the issues raised by the indictment.

What is the statute of limitations? Is appeal to the statute of limitations an evasion of responsibility? Taking refuge in technicalities. No, it is not. On this point you have a right to take note that the statute of limitations was not created to serve the interests of defendants. The purpose is to serve the public interest. And the more strictly it is observed, the more the public interest is served.

Let us examine that question a little more, because I am afraid I cannot anticipate what Mr. Cahill will say.

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Mr. Cahill: Do I understand that Mr. Browder intends to go further into the matter of the statute of limitations, from that statement?

The Court: I don't want to get into any argument with him?

Mr. Cahill: But as I understand it, your Honor has ruled on the point.

Mr. Browder: I am not referring to the statute of limitations, as it has been ruled upon by the Court; I am referring to the fact that the statute of limitations does exclude certain evidence that is before the jury from being considered by the jury

Summation by Defendant.

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and weighed as to whether it is a crime or not, because any imputation of a crime is excluded by the statute of limitations. That crime is not being tried here, and it is within my province to argue against any prejudice that might have arisen in the jury on this count.

I am directing myself against prejudice in the jury that might arise from these matters. Therefore it is permissible for me to note that the statute of limitations is not operating in my favor and that I am claiming no privileges that the statute of limitations, in so far as it operates, is in the public interest and is generally understood that its strict application is in the public interest, and that this statute establishes that upon its expiration, what may have been crimes are to be treated as having been condoned because of the failure of prosecution, that it is no longer a crime, that it is the same as if an absolute and unconditional pardon had been granted.

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Mr. Cahill: If your Honor please, I must object. I think it goes far beyond—

The Court: I don't think it touches the issue in the case. Furthermore, as a matter of law I think it has been determined that in so far as the issues in this case are concerned, there is no question of limitations. I think that you either fail to understand, or that you don't understand the issues in this case to concern a use in 1937 and a use in 1938 of a passport which is alleged to have been procured or secured on the basis or by reason of a false statement.

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Mr. Browder: I am very glad that you emphasized that, your Honor. That is what I am trying to em-

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Summation by Defendant.

phasize, but I fear that there has been a different impression,—

The Court: I think the jury understands that perfectly.

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Mr. Browder: —which I am directing myself to overcome. If everything was already clear to the jury there would be no function whatever in a summation. And I think it is the assumption upon which I must go, if I speak at all, that I have something to contribute to clarify the issue. I assume that I speak on that basis, and at this moment I am directing myself to overcoming any prejudice that may be in your mind because you have been faced with evidence about Dozenberg, Morris and Richards, that this may create prejudice in your mind, and I am citing as against such prejudice to argue with you that you should not entertain such prejudice—I am trying to argue, if I am permitted, that my argument has been sanctioned and backed up by the most eminent legal authorities of the American bar. If that is wrong I can only apologize for my lack of legal training. That is my understanding of the laws of evidence in summation and argument. If I am wrong I withdraw it and apologize.

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I would like to point out to you a great danger that might arise if it were permitted to become a practice in this country for charges to be accumulated over years and not prosecuted, accumulated in the files for five, ten, fifteen years, no action taken, but suddenly for some reason somebody wants to take action after 15 years, they can go to the files and take them all out and by some strained construction of the law can take all of that accumulation from the files and put all the accumulated odium upon the act, upon an act, a simple, commonplace, everyday act.

Summation by Defendant.

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Mr. Cahill: There is no proof in the record of any such statement.

The Court: There is no proof, and there is no charge whatever.

Mr. Browder: I must submit, of course, to the opinion of the Court, and I must confine my argument entirely within those lines which the Court lays down.

I want to further argue, however, I want to further establish that you are not trying me for the Dozenberg, Morris or Richards passports, nor for the 1934 application, nor for the 1934 passport. All of those things are excluded from any charge that is made against me. I have already cited the facts established in the evidence of the Government's witnesses. These things were known to the Government. And in weighing the seriousness of these things, you can take into account that the Government for ten years did not consider them serious enough to act upon. If you have any more doubt of this, refer to the language of the indictment. Under this indictment, in the statute invoked, the charges would have had exactly the same force, no more no less, if the previous passports were all in the name of Earl Browder and not Dozenberg, Morris and Richards. These names are absolutely immaterial to the indictment, because if every passport cited had been under my name the charge would be equally valid and subject to the same punishment.

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And, further, in 1937, instead of presenting my passport to the Immigration inspector to notify him that he had no business with me, if instead of that I had lost my passport, dropped it overboard from

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Summation by Defendant.

the boat and merely informed the inspector, "I am Earl Browder. The newspaper men and photographers will identify and confirm my citizenship"; if that had happened there would have been no crime. Not even Mr. Cahill could have charged a crime then, if I had lost my passport. This little example is very illuminating to show you the fabric of this case.

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I am constrained from going any further into the background of the case. The case has a background. It does not stand by itself. But in arguing before the jury it is not permitted to go into that background. This constraint is not one which I have put upon the case; it is one which is imposed by the Court.

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I will conclude. From the whole conduct of the case before us, from the indictment through the trial, up to this very moment, this case has been upon a level, and of such a nature characterized by the evidence relied upon, its manner of presentation, the reluctance with which certain facts within the possession and knowledge of the Government were finally brought before this Court, from all this it would be possible to conclude upon the face of it that this is a frivolous one, belated and delayed, without substance, incredible and unprecedentedly thin. I say, on the face of it, it could be so understood. Upon its face the Government's case can be best described by a quotation from Lincoln. Abraham Lincoln was speaking about the Supreme Court's interpretation of the doctrine of popular sovereignty, in 1857, when he started 'he big fight against the Dred Scott decision. And in that fight, and during those debates, Abraham Lincoln used these words, which he applied to the Supreme

Summation by Defendant.

Court's doctrine in the Dred Scott case, but which can be given a more humble use to describe this case of the prosecution. Lincoln said: "It is as thin as homeopathic soup made by boiling the shadow of a pigeon that is starved to death."

But if the gigantic machinery of justice of our Federal Government moves into action upon such a thing, such a case, it must be assumed that there exists somewhere adequate reasons which we are precluded from looking for and searching for. We are, however, permitted by the rules of this and all other courts to take judicial notice of things which are not in the record here, but which are well established public knowledge. We can refer to past periods in our country's history, some of them within the memory of the generation still living, when cases were brought which were on their face equally flimsy, but were considered serious and vital, and did play serious and vital roles in the determination of what happened to our country. Such periods were those of 1796, 1800, just before Jefferson came to power, when a long series of cases came into our Federal courts which on their face were equally flimsy to this one. We can refer to the period of 1916 and 1917, when there were cases in our courts which also appeared on their face to be flimsy and which later opinion may have predominantly adjudged to have been flimsy and frivolous. But these cases played a great role in the history of our country. They had the most serious significance in spite of their frivolousness. And I am not one to argue that this case is not serious. I would emphasize the serious consequences, not for myself—which, after all, however important it may be for me, is incidental—but for the general structure of

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Summation by Defendant.

American civil liberties, of the rights of American labor, and the American working people.

Mr. Cahill: There is no proof in the record that anybody—

The Court: I don't like to interrupt you, Mr. Browder, but this is a lawsuit, you must remember.

Mr. Browder: I am arguing that this case is serious in spite of what I consider a frivolous appearance, and which does not—

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The Court: Nobody disputes you for one moment on that. It is a very serious case, not only from the standpoint of the Government, but also from your personal standpoint.

Mr. Browder: It is.

The Court: And I don't think there is anything that anybody can say on that subject to add or detract from that statement.

Mr. Browder: Am I permitted to add anything to it if I think it would serve my case before the jury?

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I want to say, if it is permitted and since it has been testified to by some of the witnesses, that I am a Communist, the general secretary of the Communist Party.

The Court: That has nothing whatever to do with this case. Every member of this jury, before the jury was impaneled, stated under oath to you and to the Court that those extraneous considerations would have nothing whatever to do with the decision; and I am certain, as this case is closing, that every member of this jury is going to abide by what he or she said at that time.

Mr. Browder: I don't question that, your Honor. And if I speak of the statements made from the witness chair—

Summation by Prosecution.

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The Court: I don't want to get into any argument about it. I am sorry I brought it up.

Mr. Browder: If I speak about the evidence presented from the witness chair by the prosecution's evidence, the prosecution's witnesses, and it is to the effect that I am the general secretary of the Communist Party, it is not to make a political argument about it. It is merely to make it clear for the record, for the jury, and for everyone interested in this case, that I am a Communist, the secretary of the Communist Party, that I am proud of it, and I have nothing to apologize for because of it at all.

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And one final word. I want to join with the Court in urging upon the jury to deliberate and consider the evidence most thoroughly and carefully, to fix the issues accurately; to weigh the evidence with exactness, to discard all prejudices, preconceptions, and to render a verdict that will be consistent with the best American traditions.

The Court: We better take a recess for a few minutes.

I assume, Mr. Cahill, that you would like to complete your summation before a recess is taken.

Mr. Cahill: Yes, your Honor, I would.

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(Short informal recess.)

(Mr. Cahill summed up the case to the jury on behalf of the Government as follows:)

Mr. Cahill: May it please your Honor, Mr. Foreman and Lady and Gentlemen of the Jury: You have listened here this morning to a great deal of talk, much of it of an oratorical and some of it of an emotional variety.

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The summation of the defense was made by the defendant in this case, whom you have heard today not under oath. So far as what I have to say on behalf of the Government is concerned, it will be neither emotional nor oratorical; what I have to say is in the nature of a talk about plain facts, and I shall make no attempt to be flowery. I might say that in the year that I have been here conducting the Government's business, I have become well accustomed to attacks upon myself, such as were made here this morning, but I am not on trial here, the Court is
791 not on trial here, and neither are any of you on trial here. Speaking only for myself, I will say that I do try to the best of my ability to give every defendant who comes into this court a fair trial, and I will leave it to you to say whether in the days that we have been sitting here together, this defendant has not received just as fair a trial as anybody could possibly wish. I would be less than courteous at the outset if on behalf of the representatives of the Government I did not extend to each and every one of you our thanks for the close and earnest attention that you have paid to the evidence as it has gone into the record. Of course you are sitting here today
792 in a representative capacity, discharging what has aptly and I think properly been termed the most important duty that any citizen can be called upon to perform in time of peace.

You are called on to have the courage to decide the issue in this case between the United States on the one hand and the defendant Browder on the other. You recall that in our opening on behalf of the Government we urged you to keep your minds open until you have heard all the evidence. We urged you further, strangely enough, in the light of the statements this morning, to be fair, because to our way of thinking to be fair is to be American, and this is a country where fairness is still the rule. We urged you still further to pay attention to the way in which the

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witnesses testified. We pointed out to you then that very often the way a man says something is equally important with what he has to say, and in that connection in regard to one of the witnesses produced on the stand, the witness Powers; Mr. Browder told you this morning that Mr. Powers was the prosecution's own witness, seeking to convey to you a misimpression, as did so many of the statements made here this morning, that we on behalf of the Government have been the associates of Powers. I use that illustratively because I shan't go into all the statements that were made here this morning that were not in any way germane to the issue in this case. I just take the Powers illustration to serve the purpose.

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The Government didn't select Powers. We did not bring Powers here because he was in any sense of the word our choice. Powers, who was torn and thrown overboard and called names here this morning by Browder, was Browder's own selection, his own companion in the days and times when the Morris passport was being obtained, and I want to emphasize that point to you, because if you look at the other arguments made and test them against the same twist, you will see how far wide of the mark most of the statements made this morning were. It ill becomes Browder now, when Powers is on the stand and for the first time telling the truth about the identity of the individual who was the bearer of the Morris passport, to characterize him as shifty. I shall discuss Powers' testimony more at length, but there is a proverb of one of our sister nations to the effect that when a man excuses himself too often, he accuses himself.

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Now, that the evidence is concluded, the responsibility that has rested on counsel for the Government and counsel for the defendant will shortly pass to you, and in your consideration of the evidence in this case what we on behalf of the Government urge you to bring to bear is the com-

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mon sense and experience of your everyday lives in business and in the home. Because you are serving here as jurors does not mean that you should deprive yourselves of that richness of tradition and heritage that is yours as Americans.

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Now in going through this brief review of the evidence, bear in mind always that you are the sole judges of the facts, and that Mr. Browder or what I might say as to the facts, if it in any way differs from what you recall the facts to have been, please take your recollection and neither his nor mine because yours alone controls.

So, too, I might say that if in this short summary on behalf of the Government, I omit to refer to any of the testimony, it is not because I don't think it is important.

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We have tried here in the last several days an indictment containing two counts, alleging use of a passport of the United States on two separate occasions, which passport was obtained on an application containing a false statement. Lady and Gentlemen of the Jury, the integrity of our passports is as necessary to protect as the purity of our currency against counterfeiting. The strength of any democratic form of government lies in the respect which it commands not alone from its citizens but importantly as well from the other countries throughout the world. I say to you if today the statement "I am an American citizen" is to have the potency which the declaration in classic times, "I am a Roman citizen," had of that empire of antiquity, and I think today the declaration "I am an American citizen" does have great potency and credence given to that assertion by the furnishing of evidence of such citizenship in the form of a passport of the United States; it must be so strong as to preclude or make unnecessary any inquiry as to the fact, accuracy or veracity of the simple fact stated to be true on the face of the passport.

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As you know, those facts which are declared under the seal of the United States on the first page of the passport are the simple facts of everyday life having to do with name, address, place of birth and occupation. And unless and until it has been demonstrated to the satisfaction not only of those who would violate our passport laws from within, but as well to those who have occasion to inspect the passport of our citizens while traveling abroad, that we as a republic, as a democracy, are seriously intent on curbing and punishing irregularities and abuses of a grave nature in connection with the use of our passports. We cannot seriously complain that the same conduct of the United States through its citizens is questioned and viewed with suspicion, where they should rightfully give complete protection, safeguard and expedition to its bearers.

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You know, in presenting the case for the defendant, Mr. Battle was forced to admit the fact as to the Richards passport, and I take as my text for this summation his statement in that connection, and I quote "We do not deny that in 1931 a passport was issued to him in the name of Albert Henry Richards. We do not deny that he used that passport. It is in evidence that he is an official of the Communist party, and it is in evidence here that he went abroad from time to time. Now, it is perfectly obvious, and I don't think we need any proof to show, that a member or an officer of the Communist Party in going abroad, going through those troubled countries in Eastern Europe, might very well meet difficulties if he was traveling under his own name. A man known to be the secretary of the Communist party might have all sorts of difficulties put in his way, and that affords a very sensible reason for a man not wanting to travel under his own name." That is the end of the quotation.

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In effect then Mr. Battle says that all that Browder did do was to travel incognito, and I believe that at another

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point in his opening address Mr. Battle used that very term. To my way of thinking that is a classic bit of understatement. Let us look at the known factors in that connection. Was the United States allowed to go incognito? Was the United States left out of Mr. Browder's plan and scheme to avoid trouble? Certainly not. The United States was used and misused. The Great Seal of the United States was Browder's guarantee to expeditious and safe conduct, and further, in the language of the passport itself, Mr. Browder was commended by the Secretary of State to all to whom it may concern, to permit him safely and freely to pass and in case of need to give all aid, lawful aid and protection to him.

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Now, Mr. Browder, as I listened to him this morning, did not think for a moment of not abusing the United States; he was bringing disgrace on his country for so selfishly and fraudulently misusing its credentials, nor did he give thought to it from the standpoint of the thousands, the millions of our citizens who use American passports and who must of necessity in matters of business and pleasure as well in their travels throughout the world, use passports; he did not give thought to the countless and endless difficulties at border stations, at ports of arrival and the like. He didn't think of the troubles and travails he would cause the great body of our people through suspicion and doubt that he by his desire to avoid trouble for himself would cause by casting that doubt on the veracity and the accuracy of the statements appearing on the face, of the safe conduct of the United States in the form of its passport. To sum it up then, in the language of Mr. Battle, his counsel, we have here the case of a man who sets himself up, sets his own purposes up and above and beyond those of the requirements laid down in our democratic form of government by the laws enacted in the Congress of the United States, and particularly that law which I read to you in the opening, which

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requires that the application for a passport contain a true recital of all the facts.

Mr. Browder took most of his time this morning to emphasize to you this, as he put it: "the only thing I am charged with is writing in the single word 'None' in answer to a question, 'My last passport was obtained from'".

Now, let us look into that a little bit. Had Mr. Browder let us say at the time he got the second passport, the Morris passport, in answer to that same question in the Morris application, "My last passport was obtained from" and he said "The last American passport I obtained was in the name of Nicholas Dozenberg, and at that time I said I was born in Russia and that I was naturalized in the United States District Court in Boston," less discredit to our country, less discomfort to our people would have been caused, because then the offense would have been nipped in the bud on the occasion of its first occurrence. But no, Mr. Browder went on, and note the artfulness in his method, the scheming of him in connection with that Morris passport. It appears, as you recall, from the testimony of Powers, that an investigation was made in 1929 because the Morris passport was suspect. Mind you, Mr. Powers was questioned in the presence of lawyer Brodsky, and the agent of the Government was told that Morris was Morris and not Browder.

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Now, take another illustration there of the way the facts can be twisted. We listened at great length this morning to argument based on the passage of years, and as I listened to those words it occurred to me that it was like a man trying to take advantage of his own wrong, setting his own wrong up as a justification for his offense. Take another illustration in the orators of years ago. The orators were wont to set up straw men for themselves in order that they could appear to be making a point by meeting the straw men that they set up there. You will recall the examination that Mr. Dunigan put Powers through, bring-

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ing him nicely point by point to that interesting moment when Mr. Powers had the realization that Morris was Browder, and you will recall that Mr. Dunigan put the question, "When you came to that conclusion, did you go back to the Government and did you tell the Government that you had testified falsely to the Government when you told them that Morris was Morris and was not Browder?"

You will recall that Powers said he did not.

Now, having thrown the Government off through the
 809 testimony of the man that he, Browder, now tries to cast aside, but you and I know the man went down as the identifying witness on the Morris passport, Browder gets up here and argues for more than half his time this morning that the investigation into the Morris incident shows that there was nothing to the entire charge. If ever there was an attempt to profit by one's own wrong, this is an attempt here by Browder to profit by the lying of Powers in 1929, and I will tell you how much deeper that goes and the artfulness of this; the Morris passport was issued in 1927, and unless it were renewed it would expire two years thereafter, in 1929. Now, it could have been renewed, as we all know, in 1929. That covered a period
 810 of two years. But here is where the wilfulness of the whole scheme is patent, and it is fair for you to infer whether in the light of what occurred, Powers or the lawyer Brodsky didn't tell Browder of their interview with the Government agents, because the fact of the matter is that the Morris passport was not presented for renewal.

Now, that is very important. I think it is of vital importance. What they did shows the depth of the scheme. Although they could have renewed the Morris passport if they were not availing themselves of Powers' lying and what information they must have gotten from Powers or Brodsky that the Government had suspicions of that passport, Browder took another name, this time Richards, and

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mind you, he got the Richards passport in 1931 when the Morris passport, had it been renewed, would still have been valid.

Now, does that look like the work of a man who didn't know and takes the benefit of the fact that Powers had lied to the Government agent? And mark that in contrast again, because in the case of the Richards passport which he knew was not suspect, there when that came up for renewal, he presented it to the passport agency in Chicago and had it renewed for a further period of two years. In fact, as you will recall, having in mind the date by virtue of the renewal of the Richards passport, taken in conjunction with the application for the passport in his own name on September 1, 1934, Browder was in possession of two United States passports for a period from September 1, 1934, until November 19, 1935. He was in a position where at any passport station, any border station or the like, if he saw an inspector that he did not particularly want to give him trouble, he could decide whether he was Richards or Browder, and produce the seal of the United States to prove his point. Now that was the grand use of the freedom of our country and the safe conduct, as set forth in these passports, that this native born American citizen, Browder, was given. And the argument that was made here this morning, that if you go on and read the second half of the sentence which follows, or the line which follows "My last passport was obtained from", that other line contains the language, "and is submitted herewith for cancellation."

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For anybody to argue that that doesn't really mean anything, I don't comprehend, because, of course, Browder did not answer the second half of the question, did not put anything down about why the last previous passport was not submitted for cancellation, which is this other half of the statement he talked about so much, and it is per-

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fectly natural why he didn't; he was following out the wilful scheme shown in the line above, "My last passport was obtained from—None." Because, if he had answered the next line and had submitted it herewith for cancellation and had told the truth when he got the Morris passport, he would have to say, "Sorry, Mr. Secretary of State, the last time I said I was Nicholas Dozenberg, born in Russia. So here is the Dozenberg passport." And at that time he would have been caught. Had he answered that second question at the time he got the Richards passport he would have had to say, "I am sorry, Mr. Secretary of State, but I have abused the United States the last time, because on the last trip I was Morris," or had he gotten a passport in his own name, on the occurrence of any of these events Mr. Browder would have been caught.

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I don't care what class of crime it is, whether it be counterfeiting, whether it be passports, or be bank fraud, the slip on which any criminal is caught is invariably a small one, because the shrewd, the wise, the artful one has availed himself of what he thinks are all the angles, and he has covered the big ones, and he slips his foot on the small one, and it is invariably the argument, as made in the summation, that if he really had intended to do something wrong, he wouldn't have slipped on something so small. But what causes the Government to learn of the offense, as I have said, is generally one thing they don't think they can be trapped by, and what you have to judge in this case is whether, when the oath was administered by the representatives of the State Department on four separate occasions to this man and he swore that the statements set forth in the application for passport were true, means anything, means anything particularly when given in connection with an application to obtain one of the most solemn and sacred documents that it lies in the possession of our country to give, it is safe conduct to one of its citizens.

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You may ask yourselves further whether it means anything not only for him to swear falsely and perjure himself on each and every occasion, but as well whether it means anything to have willing tools and to corrupt them and to bring them in to set our laws at naught; to tamper with our vital statistics, to make a laughing stock of the protection that we put about our vital statistics, and I refer to such sacred documents as the naturalization papers of an alien who had become a citizen of the United States, and I refer to birth certificates, proof of American birth. I refer again to affidavits of birth, to notaries public, and finally to the flesh and blood witnesses, witnesses of identification, or the witnesses to identify, all of whom were corrupted, all of whom were brought in and caused to swear falsely.

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Now, I say to you that those are the questions you must decide; whether the committing of these acts and the presentation of that bulk of false and fraudulent material means anything in this country of ours.

Mr. Browder spoke this morning of a herring as being drawn across the trail, and almost at the very point that I heard that I learned of the publicity attendant upon his arrival in the United States on the two occasions where he traveled on the passport under his own name. He went on at length with that, and I waited eagerly and impatiently to hear of the popping of flashlights from photographers' bulbs on the occasion when he came in as Nicholas Dozenberg, and when he came in as Morris, and when he came in as Richards, but I waited, and you waited, and we all waited in vain for a single mention of the circumstances surrounding his arrival in our country on any of those occasions. You know, it is so patent as you go through this case that Browder knew exactly what the regulations of the Government in regard to passports were, and that he applied all the skill that he possessed and what

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resources he had to set the safeguards of our country at naught.

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Let me illustrate that point: do you recall early in the case we had a young man come over from Ellis Island who told us that it is impossible to check up on the arrival in the United States of a person by merely giving the name; that you have got to have not only the name but you have to have as well the day of arrival and the name of the ship on which the person came over. Now, Browder shows full well in his conduct, in the evidence throughout this case, his appreciation of the need for that information, as to the importance of the answer to the question as to where the last passport was obtained. This case is the best illustration of the importance of that question. The question is designed among other reasons to detect and bring about the prosecution of just such crimes as this, or, as Mr. Bell, the passport agent, well put it, to see to it that nobody has two passports of the United States in his possession even under his own name. This argument was further advanced this morning: "Well, I could have gotten in anyway. I didn't need to use this." That comes as almost a slap in the face to me because after a man has made a mockery of everything that we hold dear, natural-

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ization papers, records of birth, oaths taken solemnly, then to come and say to us in this courtroom, "Well, that is just technical. What does that mean, after all? I didn't have to do it. I could have come in in some other way, and the immigration people couldn't have kept me out."

That reminds me of the fellow who was caught going through the second story of a bank at night and his defense was that he had money in the bank and that all he intended to steal was the exact amount he had there, and the fact that he did not go in through the front door or between the hours of nine and three, that was merely technical, he didn't realize that he was committing a burglary.

Now, when a man presents the credentials of the United

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States and uses them and does that on the basis of false statements, then after he has made a laughing stock of us all and made a mockery of our institutions, to stand in front of us and say, "It is just technical; I could have done it some other way and not committed any offense," is an insult.

The fact is that not only did Mr. Browder use passports, but I think it is a fair statement to make on the evidence in this case that he was fond of passports and found that he could expedite himself in his activities, as Mr. Battle told us, through this scheme which he thought would render him free from detection, and he got so bold in this that he used it four times.

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In almost any American game, particularly baseball, three strikes is out, but Browder got away with four, and it was on the fourth strike that he was caught.

If ever there was deliberation, aggravation, wilful intent, it is in this particular case.

Now as to the use these passports were put to, we have this Exhibit 5 in evidence here, showing the stamp, and I urge you to take it with you and look it through; look at all the stamps that are on it, and have in mind the testimony of Bedacht, that Browder was in Moscow in 1921 and again in 1933; and have in mind also the testimony of Siegel, of the State Department, that the files of the State Department had been searched and do not show any application for a passport in the name of Browder prior to September, 1934; and bear in mind further that the earlier of these two visits to Moscow was in the lifetime of the Dozenberg passport, and the later was in the lifetime of the Richards passport.

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Lady and gentlemen, if there was a George Morris, if there was a Richards who used the passports in these names, where are they? Why weren't they produced?

The testimony as to those passports, like all the testi-

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mony in this case, stands uncontradicted. Have that in mind.

Can there be any doubt in your mind as you look at these passport applications and the photographs appearing on them, that each and every one of these photographs was a photograph of Browder at a different period in his life? Whether or not he gave his occupation as he did, a journalist, or with a fine touch of humor, as he did in the Richards case, just to make the thing a little more dramatic; in the Richards case he put himself down as a musician, blowing the sour note on others.

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Well, finally, coming down to the last witness in the case, the handwriting expert, Blackburn, and I waited for a prolonged cross examination as to what Blackburn had to say, and I was surprised that about all they could find was that he like myself was an employe of the Department of Justice, but to turn to the more serious parts of his testimony, and I call your attention to the fact that there was no argument made on this at all this morning; you have definitely in mind the manifestation of the identify in both the conscious and unconscious characteristics in the writings. One reason why I like to use Government experts is that they do testify with candor and frankness, and you will recall in the Dozenberg situation Mr. Blackburn pointed out to you that there was a pictorial similarity between the "Dozenberg" as signed on the naturalization certificate and the "Dozenberg" as signed on the passport application. So he went on to tell you that that pictorial similarity arose from an attempt to simulate or imitate one handwriting.

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I will not go at much further length into that testimony. The word "None" occurs to me as being the word that shows the identity of the handwriting on all four applications. The words "New York" occurred to me as an excellent illustration.

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Now, lady and gentlemen, I have about concluded, and in leaving the case on behalf of the Government with you, I again say that you bring your common sense to bear, and as you sit in the jury room think of yourselves in your offices and in your homes. Ask yourselves, how do these things happen? And bear in mind that you are the first jury that has ever heard this testimony and you have had demonstrated before you how this did happen. Bear in mind further that you are sitting here in a representative capacity, that you are discharging an official duty, and when Mr. Browder tells you that this is an important case to the defendant, it is; so too, is it an important case to the Government, and the people of the United States await your verdict, and I say to you that when abuses of this kind are brought to light, for our own protection they must be relentlessly exposed, because abuses of this kind not only cast reflection upon the good name of our country but as well cause endless embarrassment, delays and law-suits to our men and women traveling under the safeguard of an American passport. We can't leave the situation to some foreign official, on looking at an American passport and seeing the name Browder, to say, "Now, are you really Browder or are you Dozenberg, Morris or Richards?" And for Browder to say, "Oh, I made a mistake; I handed you the Browder passport. Just give it back; I will give you the Richards."

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Now, the American people have a sense of humor, but there does come a time where such light treatment of our sacred institutions merits a stinging rebuke for the prostitution and the abuses and uses not only of our vital statistics, but as well of the safe conduct given to our citizens abroad.

Lady and gentlemen, the evidence in this case I think demands a verdict of guilty.

The Court: I rather suppose that the jury wants to take a recess until after lunch.

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Defendant's Requests to Charge.

The Jurors: Yes, your Honor.

The Court: All right, we will take a recess until two-thirty p. m.

(Recess until 2:30 p. m.)

(The defendant's requests to charge are as follows:)

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1. The defendant is presumed to be innocent until the contrary is established beyond a reasonable doubt. (Charged.)

2. The presumption of innocence is not a mere formality. Every juror is bound to entertain it conscientiously, sincerely and without any mental reservations or evasion whatsoever, and to give to the defendant the full benefit of it. (Charged in substance.)

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3. In deciding the question of reasonable doubt, which each juror must decide for himself, he must not allow his previous opinions or impressions to affect, impair or destroy a doubt which otherwise he would entertain upon the evidence. Each juror must dispel any impression or preconceived notion which he may have derived from the reading of newspapers. (Allowed.)

4. Before you can find the defendant guilty, the facts proved must not only all be consistent with the theory of the defendant's guilt, but they must each and every one be absolutely inconsistent with the theory of innocence; otherwise, you must acquit. (Charged in substance.)

5. The denial of the motion to dismiss the indictment made by the defendant's counsel at the close of the Government's case, and the denial of the motion made by the

Defendant's Requests to Charge.

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defendant's counsel at the close of the entire case, are not to be taken by the jury as any indication of the guilt of the defendant. (Charged in substance.)

6. The jury, in determining the guilt or innocence of the defendant can consider only the evidence of the case and are to disregard any statement made during the course of the trial by counsel and the Court not supported by evidence, and they are not to be influenced or governed by any expression of opinion or action of either Court or counsel. (Charged in substance.)

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7. The jury, in considering this case after its submission to them, must proceed upon the presumption that the accused is innocent of the crime charged in the indictment, and that it is necessary for the Government to rebut this presumption by the evidence which convinced them beyond a reasonable doubt that the defendant is guilty of the crime charged. (Charged in substance.)

8. The burden of proof in this case rests with the Government from the beginning to the end of the trial to establish beyond a reasonable doubt every fact essential to the conviction of the defendant, and if the Government has failed to prove such beyond a reasonable doubt, the defendant must be acquitted. (Charged in substance.)

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9. The fact that the Court has denied motions made from time to time by defendant's counsel on behalf of the defendant, and the rulings of the Court upon objections, and the refusal of the Court to charge as requested, are not to be taken as any expression of opinion on the part of the Court upon the facts of this case, but must be regarded only as rulings upon the law concerning which the jury has no interest. (Charged in substance.)

Defendant's Requests to Charge.

10. In weighing the testimony and arriving at the verdict, the jury must not be influenced by questions of public interest or public policy, newspaper articles, the effect of their verdict upon other persons charged with crime, whether the verdict would or would not be pleasing to the judge, or any other consideration outside of the evidence in this case. (Allowed.)

839 11. If the evidence against the defendant is equally consistent with innocence and guilt, the jury must adopt the construction in favor of innocence, and must acquit. (Allowed.)

12. The failure of the defendant to take the witness stand to testify in his own behalf does not create any presumption against him; the jury is charged that it must not permit that fact to weigh in the slightest degree against the defendant, nor should this fact enter into the discussion or deliberations of the jury in any manner. (Charged.)

840 13. The fact that the defendant on trial has been indicted is not to be taken in the slightest degree as indicating his guilt. Consequently, the jury must not give any weight whatsoever to the fact that an indictment has been returned against him. To no extent whatever does any charge in the indictment prove the fact of which it speaks or the guilt of the defendant on trial, and the jury must ignore it entirely as effective for such purpose. It does not even create nor should the jury permit it to create a suspicion of guilt. (Charged in substance.)

14. The presumption of innocence survives the filing of an indictment, arrest, arraignment and the empanelling of a jury for the trial of the issues. It continues during the introduction of evidence upon the trial, the summing up of counsel, and the charge of the Court. (Charged in substance.)

Defendant's Requests to Charge.

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15. It is not necessary for this defendant to prove his innocence, but the burden of proof rests upon the prosecution to establish every element of the offense with which he is charged, and every element of such offense must be proved to a moral certainty and beyond all reasonable doubt. If the prosecution fails to establish to a moral certainty and beyond all reasonable doubt any one element of the offense with which the defendant is charged, and which it is necessary to establish in order to convict, or if there remains in the minds of the jurors a reasonable doubt as to whether or not the prosecution has established any one of such elements, constituting the offense, to a moral certainty and beyond all reasonable doubt, then you must find the defendant not guilty. This applies to the jury as a whole and to each individual juror. (Charged in substance.) 842

16. Reasonable doubt is doubt based upon reason which is reasonable in view of all the evidence. To overcome such reasonable doubt requires such proof as satisfies the judgment and conscience of the jurors and each of them that the offense charged has been committed by the defendant and as to leave no other reasonable conclusion possible. Otherwise, the jury must acquit. (Charged in substance.) 843

17. Mere probabilities or suspicions are not sufficient to warrant a conviction nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of an indictment, nor is it sufficient that upon the doctrine of chances it is more probable that the defendant is guilty than innocent. The jury are not concerned with probabilities, but only with evidence. (Allowed.)

18. That the actions of the Court during this trial in passing upon motions made by the defendant, or in over-

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Defendant's Requests to Charge.

ruling objections made by him, or of sustaining objections made by counsel for the Government, are not to be taken as an indication of the guilt or innocence of the defendant. Counsel for the defendant not only have the right, but are charged with the duty of objecting to the introduction in evidence of any statement or exhibit offered by the Government which such counsel for the defendant believes, under the rules of evidence, should not be admitted. The jury must understand that the Court has no opinions and expresses no opinion as to the guilt or innocence of the defendant. (Charged.)

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19. While it is desirable that the jurors agree upon a verdict after a full and fair discussion, nevertheless, it is the duty of each and every member of the jury to decide the issues presented for himself or herself, and if, after a careful consideration of the evidence in the case and the instructions of the Court and a free consultation with his fellows, there is in any juror's mind a reasonable doubt as to the defendant's guilt, it is his or her duty, under his or her oath, to stand by this opinion. No juror should yield his or her view simply because all the other jurors may disagree with him or her. (Refused.)

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20. I charge you as a matter of law that a native-born American citizen, as the defendant herein is conceded to be, has an absolute right to enter or leave this country without a passport (but must show he is an American citizen). (Allowed with addition.)

21. The fact that the defendant arrived into the United States on April 30, 1937, and February 15, 1938, on foreign boats, is of no consequence in determining his right to enter the United States on these occasions. (Allowed.)

22. Under the first count of the indictment, the defendant is charged with the use and attempt to use a passport,

Defendant's Requests to Charge.

847

on the 30th day of April, 1937, for the purpose of gaining entry and admission into the United States at the Port of New York. Under the second count of the indictment, the defendant is charged with the use and attempt to use a passport, on the 15th day of February, 1938, for the purpose of gaining entry and admission into the United States at the Port of New York. Each count charges a distinct crime. If the jury find that the use described herein is not such as was contemplated by the statute, then they must acquit. (Refused.)

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23. In this connection, the jury must take into consideration that a passport is a document which, from its nature and object, is addressed to foreign powers, purporting only to be a request that the bearer of it may pass safely and freely, and is to be considered rather in the character of a political document, by which the bearer is recognized, in foreign countries, as an American citizen, and which, by usage and law of nations, is received as evidence of the fact. It is a document issued by the Secretary of State, or under his authority, by a diplomatic or consular officer of the United States, stating his citizenship and requests for him free passage and all lawful aid and protection during his travels or sojourns in foreign lands. (Refused.)

849

It is intended only for use abroad, and has no sanctioned uses, customary or statutory, within the United States.

24. It was not the intention of Congress, in enacting Section 220 of Title 22, United States Code, to punish a person who uses a passport in the manner charged in this indictment. (Refused.)

25. I charge you as a matter of law that the defendant had the absolute right to enter into the United States even though he did not have a passport, provided, however, he

850

Defendant's Requests to Charge.

could, by means of any satisfactory proof, establish that he is a native-born American citizen, that is, by documents such as a birth certificate, baptismal certificate, or other proof that he was born in the United States. The fact that he may have used a passport for this purpose is not a "use" as contemplated by Congress in defining the crime. (Refused.)

26. If you should find that the sentence in the application for a passport, executed by the defendant on or about August 31, 1934, which reads as follows:

851

"My last passport was obtained from

_____ (Insert Washington or location of office abroad)

on _____ and is submitted herewith

(Date)

for cancellation. _____

(Give disposition of

_____ passport if it cannot be located.)"

852

was interpreted by the defendant to mean that he did not have any passport in his possession to be submitted for cancellation, and that it was not his intention to conceal from the Government the fact that he previously had obtained another passport, then it is your duty to find the defendant not guilty. (Refused.)

27. If the statement in the application for the passport, dated August 31, 1934: "My last passport was obtained from _____

(Insert Washington or location of office abroad)

on _____ and is submitted herewith for

(Date)

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853

cancellation.", could be reasonably interpreted as meaning, "If you have your last passport, obtained from Washington, or abroad, submit it for cancellation", and the defendant honestly and with good cause, so interpreted the said statement, then the word "None" was not a false statement, and the defendant cannot be held to have made a false statement. (Refused.)

28. The application for the passport was drawn by a Department of the Government and if the statement in the application herein involved is ambiguous, it should be construed strictly in favor of the defendant. (Refused.)

854

29. Falsity consists in knowingly affirming a condition without probable cause and probable cause must be estimated not from the jury's standpoint but from the defendant's. (Refused.)

30. Although the Government in its indictment charges by quotation from this sentence, "My last passport was obtained from", and does not complete the sentence as contained in the application blank, which was introduced into evidence by the Government, it is your duty in arriving at a determination of the interpretation of this sentence to read it in its entirety with a view to determining its entire context, and not merely that portion of the sentence which has been quoted in the indictment. (Refused.)

855

31. If you should find, after interpreting this entire sentence, that the defendant concealed the fact from the Government that he had a prior passport, then you must determine further whether such concealment was willful and material; if not, you must acquit. (Refused.)

32. Even if you find as a matter of fact that the word "None" was a materially false statement, you must acquit.

856

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this defendant if the passport issued herein was used merely as evidence of his conceded identity as a citizen of the United States on the occasion of his arrival at the Port of New York on the 30th day of April, 1937, and on the 15th day of February, 1938. In this connection, you must remember that the defendant is conceded by the Government to have been a citizen of the United States at all times since his birth in this country. (Refused.)

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33. If you find that the presentation of the passport on those two occasions was only for the purpose of identifying himself as a citizen of the United States, and not for the purpose of gaining a privilege as is intended by the inherent nature of a passport when used in foreign countries, then you must acquit the defendant. In determining the inherent nature of a passport, you must bear in mind that a passport has no sanctioned use, in law or custom, insofar as an American citizen is concerned, within the Port of New York. (Refused.)

858

34. The mere fact that the passport was stamped by a Government immigration inspector does not in and of itself constitute a "use". (Allowed.)

35. A Government immigration inspector has only such authority as is conferred upon him by law. His authority, therefore, is limited solely to the exclusion of such aliens who, by law, are not entitled to enter this country. He has no power to exclude an American citizen for any reason whatsoever. (Refused.)

36. An American citizen may be guilty of crime, or he may be diseased, or he may be otherwise undesirable, but nevertheless, a Government immigration inspector has no jurisdiction whatsoever to pass upon his right to enter this country. He must, as a matter of law, permit him to enter

Defendant's Requests to Charge.

859

the country, when satisfied that he is an American citizen.
(Refused.)

37. The immigration inspector, Larson, had no right to bar the entry of the defendant into the United States on April 30, 1937. (Allowed.)

38. The immigration inspector, German, had no right to bar the entry of the defendant into the United States on February 15, 1938. (Allowed.)

39. The presentation of a passport to an immigration inspector employed by the United States Government for the purpose of identifying the defendant as an American citizen, is not such a utilization of a passport as is inherent in its nature, and is therefore not a "use" of such passport within the contemplation of Title 22, Section 220 of the United States Code, as charged in the indictment.
(Refused.)

860

40. Although there has been some testimony introduced by the Government to the effect that the defendant at various times was identified and seen in Moscow, such fact nevertheless must not be considered by you in determining the significance of the use to which this passport has been put. The issue before you is the one that is raised in the indictment. You cannot go outside of the indictment in considering whether the passport was used abroad. You must, therefore, completely disregard the testimony of the witnesses who testified that they saw the defendant in Moscow. (Refused.)

861

41. You are not permitted to infer from the fact that the defendant used the passport or may have used the passport in his travels abroad, that he therefore violated the law. You must limit your consideration solely and ex-

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Defendant's Requests to Charge.

clusively to the presentation of the passport to the American immigration officers in the Port of New York on the specific days mentioned in the indictment, that is April 30, 1937, and February 15, 1938. (Allowed.)

42. There was no law or rule authorized by law at the time the statement was made in the application, which prohibited the issuance of more than one passport to the same citizen. (Denied.)

863

43. There was no law or rule authorized by law at the time the statement was made in the application which provided that a citizen might not, for each journey that he made, secure another passport even though his prior passport remained unexpired or uncanceled. (Refused.)

44. There was no law or rule authorized by law at the time the statement was made in the application binding upon an applicant for a passport, which provided that a prior passport had to be submitted for cancellation as a prerequisite to the issuance of a new passport. (Refused.)

864

45. The defendant is not here on trial for obtaining passports under the name of Dozenberg, Morris or Richards, in 1921, 1927 and 1931, respectively. Even if you find that the Dozenberg, Morris and Richards passports were illegally obtained and used, but on the other hand find that the Earl Russell Browder passport of 1934 was properly obtained and used, then it is your duty to acquit this defendant.

46. The defendant is here on trial solely for the alleged use of the passport issued to him on September 1, 1934, under his own name, Earl Russell Browder. You must not be prejudiced by the introduction of the proof concerning Dozenberg, Morris and Richards passports, as they do

Defendant's Requests to Charge.

865

not constitute the offenses for which the defendant is now here on trial. Those offenses, if they are such under the law, are outlawed by the statute of limitations. (Allowed.)

47. If you find that the United States Government, through its agents, had knowledge in 1929 of the fact that the defendant had obtained a passport in 1927 under the name of Morris, then you may consider that fact as continuing to exist in the knowledge of the United States Government up until the time that he applied for a passport under the name of Earl Russell Browder. And in that connection, you may consider the testimony of the Government witness, Bell, who testified that there appeared a notation on the Morris application, made in 1929 by a Government employe by the name of Miss Wright, as follows: "Recorded in Fraud File as suspect, 12/2/29, Wright". In this connection you may further consider the testimony of the witness, Powers, a Government witness, who testified in answer to the prosecutor's inquiry that he had been visited, in 1929 by a Government agent and questioned concerning the Morris application, which the said agent exhibited to him, and questioned further whether Browder could have been Morris; and in spite of this knowledge the Government issued a passport to the defendant in 1934. You are therefore to consider the foregoing in determining whether the Government was or was not misled by the word "None". (Refused.)

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48. The alleged false word "None" in the application for the passport, dated August 31, 1934, must have been the effective cause of inducing or securing the issuance of the passport which was used on April 30, 1937 and February 15, 1938; and if you are not convinced of that beyond a reasonable doubt, then you must acquit. (Refused.)

49. If you find that the word "None" is no answer to the question "My last passport was obtained from", then

868

Defendant's Requests to Charge.

such statement contained in the word "None" cannot be the basis for the charges in the indictment that the defendant made a false statement in order to obtain the issuance of the passport issued on September 1, 1934; and if you so find, you shall acquit the defendant. (Refused.)

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50. If the jury should find that at the time of the issuance of the Earl Russell Browder passport, September 1, 1934, the Government had knowledge or reason to believe that accused had prior thereto received a passport, then the jury should find that the Earl Russell Browder passport was not secured by reason of the allegedly false statement "None" made in the passport application. (Refused.)

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51. If the jury should find that at the time of the renewal on February 2, 1937, of the Earl Russell Browder passport issued September 1, 1934, the Government had knowledge or reason to believe that accused had prior thereto received a passport, then the jury should find that the Earl Russell Browder passport was not secured by reason of the allegedly false word "None" made in the passport application; and that in any event whatever impropriety existed in securing the issuance of said passport was rendered harmless and immaterial by such knowledge or notice existing at the time of said renewal. (Refused.)

52. In determining whether or not the Earl Russell Browder passport issued September 1, 1934, was secured "by reason of" the allegedly false word "None" in the passport application, the opinions of the clerks or officials of the State Department are to be disregarded by the jury, and that question is to be determined solely with reference to the Congressional statutes and the Presidential rules then in force governing the issuance of passports. (Refused.)

Charge of the Court.

871

53. If you find that the renewal application, which has been offered by the Government in evidence, executed in 1937, is a separate and distinct application for a passport, even though the physical document brought into being was identical to the original document which he had obtained on the application made in 1934, and if you find that there were no false statements of a material nature contained in such renewal application, then it is your duty to acquit this defendant. (Refused.)

54. You must always bear in mind that the Government cannot prevail unless it proves beyond a reasonable doubt two important factors: First, that the application which induced the issuance of the passport was materially false; and second, that the use of the passport so issued was in violation of the statute, as contemplated by Congress. On the other hand, if the Government fails in proving any one or both of these factors, it is your duty to acquit this defendant. (Charged in substance.)

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55. Although the same section makes it a crime to make a false statement of a willful and material nature in an application for a passport, this is not the part of the section for which the defendant here is on trial. If this is all that the Government proves, you must acquit the defendant. (Argumentative. Refused.)

873

Charge of the Court.

(Afternoon session—2:30 p. m.)

The Court (Coxe, J.): Members of the Jury, this is an indictment in two counts, against Earl Russell Browder, for wilfully and knowingly using on two occasions, a passport alleged to have been secured by reason of a false statement.

874

Charge of the Court.

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The first count charges that the defendant obtained a passport, number 145182, in his own name on September 1, 1934, on an application executed by him, in which he wrote the word "None" in a blank following the printed words of the application, "My last passport was obtained from"; that this statement was false because the defendant had obtained three earlier passports, one in the name of Nicholas Dozenberg in 1921, another in the name of George Morris in 1927 and a third in the name of Albert Henry Richards in 1931; that the 1934 passport issued to the defendant was renewed on February 2, 1937, and further that this passport, namely, the 1934 passport issued to the defendant, was wilfully and knowingly used by the defendant before the immigration and naturalization service on April 30, 1937, in securing entry into the United States.

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The second count in all respects is identical in phraseology with the first count except in one particular, namely, that it omits the allegation that the passport was used on April 30th, 1937, and alleges in place thereof that the passport was used by the defendant wilfully and knowingly on February 15th, 1938, for the purpose of gaining entry into the United States.

The two counts in the indictment are framed under a federal statute which provides that anyone who shall wilfully and knowingly use or attempt to use any passport the issue of which was secured in any way by reason of any false statement, shall be guilty of an offense against the United States:

Under this statute it is necessary for the Government to show, first, that the issue to the defendant of the 1934 passport was secured in any way by reason of any false statement, and second, that the defendant wilfully and knowingly used the passport on either or both of the two occasions mentioned in the indictment. The words, "wilfully and knowingly," as employed in the statute, mean

Charge of the Court.

877

deliberately and with knowledge and not something which is merely careless or negligent or inadvertent. The issuance of passports generally is regulated by statute, that is, a statute of the United States, requiring a sworn, written application by the applicant as a prerequisite to the issuance of the passport, containing a true recital of each and every matter of fact which may be required by law or by any rules authorized by law.

I shall not attempt any extended review of the testimony produced by the Government. That is hardly necessary in a case of this kind, which has not taken a long period of time to try, and which I am sure is fresh in your recollection at the present time. 878

Much of the testimony was directed toward the practice in the issuance of passports, and also toward explaining the routine of the Government officials in connection with the passports involved in this case.

It has been stipulated that the handwriting appearing on the 1934 passport or rather on the application for the 1934 passport, was largely that of the defendant, and the principal issue in the case is whether the word "None" following the printed words "My last passport was obtained from", was a false statement—a knowingly false statement. 879

The testimony of the Government in support of the allegation of the indictment that the statement was false, concerned the Dozenberg, Morris, and Richards passports mentioned in both of the counts. The Government contends that each of the applications for these three earlier passports was in fact made by the defendant and that the passports themselves were obtained by him. It is not necessary, however, for the Government to show that all three of these earlier passports were obtained by the defendant in order to establish the falsity of the statement. Satisfactory proof as to one of them will be sufficient for that purpose.

Charge of the Court.

I should like very briefly to indicate or to point out to you some of the testimony which the Government relies on in this case in support of its contention that the three earlier passports were in fact obtained by the defendant.

First, there is the testimony from various witnesses that the photographs on the three earlier passports appear to be photographs of the defendant, and that testimony, as you will recall it, came not only from Dozenberg but from Bedacht and also from Powers.

881 Second, there is the testimony of Dozenberg that the application for the 1921 passport is neither signed by him nor was it in his handwriting, nor was the passport issued to or obtained by him.

Third, there is the testimony of Powers, the identifying witness to the 1927 passport, that he learned subsequently to 1927, when the passport was issued, that the George Morris for whom he acted as an identifying witness was Browder, the present defendant.

882 Fourth, there is the testimony of Blackburn, the special agent of the Federal Bureau of Investigation, that the handwriting on all three of these earlier applications is that of the defendant. And I need not comment on that testimony, for you all saw the demonstration made by Blackburn when he gave his testimony. It was not so much the opinion which he gave after pointing to the various parts of the applications which he thought were indicative of the fact that the handwriting was the same in all three applications, but in the way he was able to convince you, if he did convince you, by looking at these different exhibits, that his opinion was sound and reasonable.

The contention of the defendant, as I understand it, with respect to these three earlier applications, is that the Government has failed to substantiate its case beyond a reasonable doubt. If you find that the statement in the 1934 passport was knowingly false, you will then come to the question whether the 1934 passport as renewed in 1937 was

Charge of the Court.

883

wilfully and knowingly used by the defendant, on either or on both of these two occasions when it is alleged in the indictment it was used, namely, on April 30, 1937, and again on February 15, 1938.

The testimony on this branch of the case was that the defendant arrived at the Port of New York from abroad on April 30, 1937, on the steamship Berengaria, and again on February 15, 1938, on the steamship Aquitania; and further that on each of these occasions he presented the 1934 passport to the immigration authorities and that they stamped the passport accordingly.

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The indictment in this case is not evidence. It is a mere accusation or a charge to define the issues in the case and to bring the defendant into court.

The Court's rulings during the course of the trial are of no particular concern of the jury. They were made on questions of law and should not influence you one way or the other insofar as the issue which you are to determine is concerned. The defendant is presumed innocent until he has been proved guilty beyond a reasonable doubt and that presumption or shield of innocence follows him throughout the entire trial until it is overcome by evidence satisfactory to you that he is guilty beyond a reasonable doubt.

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Reasonable doubt is nothing more than a doubt based on reason or one which may be discussed and supported by argument and discussion. It is neither a capricious nor an arbitrary doubt, nor is it one which is engendered by a natural reluctance which most people have to perform an unpleasant or a difficult task.

The failure of the defendant to take the witness stand and testify in his own behalf does not create any presumption against him, and the jury must not permit that fact to weigh in the slightest degree against him, nor should that fact enter into the discussions or deliberations of the jury in any manner.

886

Additional Requests With Reference to Charges.

The jury is the sole judge of the facts and the inferences to be drawn from the facts, and of the credibility of the witnesses. And if you find that I have misstated or misquoted any fact, you will disregard entirely what I have stated to you and abide solely by your own recollection.

If you find that any witness has wilfully given false testimony, you are permitted, if you care to do so, to disregard the testimony of such witness entirely.

Your verdict in this case may be either guilty or not guilty on either or both of the two counts in the indictment.

887

Are there any requests to charge and any exceptions to the charge?

And I may say in that connection, I have during the summation had an opportunity to examine somewhat casually the requests to charge submitted to me on behalf of the defendant, and I have indicated in the margin my disposition of those requests respectively, and I will now hand the paper back to Mr. Battle, and if he cares to have me charge any of those requests which have been allowed, I should be very glad to do so, but I think probably that I have covered all of them in the main charge.

888

Mr. Battle: If your Honor please, in view of your Honor's statement to the jury in the charge that it was only necessary for the Government to prove one of the three previous passports charged in the indictment, I respectfully renew my motion that the testimony as to the Dozenberg and Morris applications and passports are immaterial and prejudicial on the ground already stated, and if your Honor adheres to your former ruling, I will respectfully except to your Honor's charging in regard to the Dozenberg and Morris passports and applications.

The Court: Yes.

Mr. Battle: And may I ask if your Honor adheres to your ruling?

The Court: I do.

Mr. Battle: I beg your pardon?

Additional Requests With Reference to Charges.

889

The Court: Yes, I do.

Mr. Battle: If your Honor adheres to your ruling as to the use of the passport as set up in the indictment in respect to my request and motion that your Honor rule that the use set up in the indictment is not within the contemplation of the statute, then I would ask that your Honor submit to the jury in your charge as to whether or not the use set up in the indictment is such a use as is contemplated by the statute.

The Court: No, I will decline to do that.

Mr. Battle: I except. Will you Honor give me just a moment to look over these. I respectfully ask that your Honor read request number 10.

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The Court (reading): "In weighing the testimony and arriving at the verdict, the jury must not be influenced by questions of public interest or public policy, newspaper articles, the effect of their verdict upon other persons charged with crime, whether the verdict would or would not be pleasing to the judge, or any other consideration outside of the evidence in this case."

Mr. Battle: I now ask that your Honor charge number 21.

The Court (reading): "The fact that the defendant arrived into the United States on April 30, 1937, and February 15, 1938, on foreign boats, is of no consequence in determining his right to enter the United States on these occasions."

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Mr. Battle: I will ask that your Honor read 34.

The Court (reading): "The mere fact that the passport was stamped by a Government immigration inspector does not in and of itself constitute a 'use'."

Mr. Battle: Request number 37, if your Honor please.

The Court (reading): "The immigration inspector, Larson, had no right to bar the entry of the defendant into the United States on April 30, 1937."

892

Additional Requests With Reference to Charges.

I think that is quite obvious because of the fact that Inspector Larson never claimed that he had any such right. He is merely there for the purpose of investigating.

Mr. Battle: I will ask your Honor to charge number 38, which is the same statement as the other request, with respect to the witness German.

The Court (reading): "The immigration inspector, German, had no right to bar the entry of the defendant into the United States on February 15, 1938."

893 And I make the same comment with respect to that as I did with respect to the other.

Mr. Battle: And I ask your Honor to charge 41.

The Court (reading): "You are not permitted to infer from the fact that the defendant used the passport or may have used the passport in his travels abroad, that he therefore violated the law. You must limit your consideration solely and exclusively to the presentation of the passport to the American immigration officers in the Port of New York on the specific days mentioned in the indictment, that is April 30, 1937, and February 15, 1938."

894 And I assume by the use of the words "presentation of the passport to the American immigration officers," that that comprehends the entire incident, the submission not to a particular person but to all the officials at that time or those times respectively.

Mr. Battle: And then, if your Honor please, opposite the requests 45 and 46 there is a question mark, and I ask that your Honor charge those two.

The Court: I will charge the first part of number 45, namely "The defendant is not here on trial for obtaining passports under the names of Dozenberg, Morris or Richards, in 1921, 1927 and 1931 respectively." But as I have already stated in the main charge, he is here for knowingly and wilfully using on these two occasions alleged in the indictment a passport, namely, the one in 1934 alleged to have been secured by reason of false statements.

Additional Requests With Reference to Charges.

895

Mr. Battle: The final sentence there, your Honor?

The Court: I will refuse to charge the last sentence of

45.

Mr. Battle: Will your Honor give me an exception.

Then as to 46, your Honor, I request that that be charged.

The Court (reading): "The defendant is here on trial solely for the alleged use of the passport issued to him on September 1, 1934, under his own name, Earl Russell Browder. You must not be prejudiced by the introduction of the proof concerning Dozenberg, Morris and Richards' passports, as they do not constitute the offenses for which the defendant is not here on trial."

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Mr. Battle: "Is now here on trial."

The Court: Yes. "Those offenses, if there are such under the law, are outlawed by the statute of limitations."

I do not, however, mean by this statement that you should not consider the testimony with respect to the Dozenberg, Morris and Richards' passports insofar as it relates to the issues under the two counts in the indictment which I have already explained to you.

Mr. Battle: Will your Honor give me an exception. Will your Honor also charge number 11.

The Court: Number 11?

Mr. Battle: Yes.

897

The Court (reading): "If the evidence against the defendant is equally consistent with innocence and guilt, the jury must adopt the construction in favor of innocence, and must acquit."

I think I have in substance charged all of that. I am quite certain that Mr. Battle's language is better than mine, but I thought that had in substance been fully covered in the main charge.

Mr. Battle: Will your Honor charge 17 and 20?

The Court: I was wondering if we could not go along in numerical order and perhaps in chronological order, too.

898

Additional Requests With Reference to Charges.

Mr. Battle: This is in numerical order.

The Court: Number 17?

Mr. Battle: Yes, sir.

The Court: (reading): "Mere probabilities or suspicions are not sufficient to warrant a conviction nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of an indictment, nor is it sufficient that upon the doctrine of chances it is more probable that the defendant is guilty than innocent. The jury are not concerned with probabilities, but only with evidence and with the issues in this case."

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Mr. Battle: Then, finally, number 20, your Honor.

The Court: (reading): "I charge you as a matter of law that a native-born American citizen, as the defendant herein is conceded to be, has an absolute right to enter or leave this country without a passport," but must show he is an American citizen. And I suppose too, that he is subject to any reasonable regulations that may have been promulgated with respect to his admission and leaving the country provided they were duly authorized by law.

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Mr. Battle: Will you Honor give me an exception to each of the requests which your Honor declined or refused to charge?

The Court: Certainly. Is there anything further?

Mr. Cahill: I have nothing, your Honor.

The Court: I am going to excuse Mr. Weir, juror number 13. I am sorry you are not going to be with us any longer.

(Marshals sworn.)

The Court: If the jury wishes any and/or all of the exhibits, all you have to do is to send for them.

(The jury retired at 3:07 p. m.)

Verdict.

901

(The jury returned at 3:50 p. m.)

The Clerk: Mr. Foreman and members of the jury, have you agreed upon a verdict?

The Foreman: We have, sir.

The Clerk: How say you?

The Foreman: Guilty as charged on both counts.

Mr. Battle: I ask that the jury be polled.

(Jury polled.)

Mr. Battle: If your Honor please, I ask permission to reserve any motions—

The Court: No, I think you should make them now and we will dispose of this case immediately.

902

Mr. Battle: I ask your Honor, when will you set the case down for sentence?

The Court: Now.

Mr. Cahill: The Government moves for sentence.

Mr. Battle: Pardon me a moment, please. If your Honor please, I will move for an arrest of judgment and for a new trial on all the motions made and objections taken—the motions made at the opening and during the trial and at the close of the case for the Government and at the close of the entire case after the defendant rested, and on each and every one of those motions and each and every objection made and exception taken; and I also move to set aside the verdict and for a new trial on the ground that it is contrary to law, contrary to the evidence, and to the weight of the evidence.

903

The Court: I will deny your motion. I think the verdict of the jury is the only one possible on the evidence. I am not in the habit of thanking the jury for what I conceive to be their duty as citizens of the United States, but I think they are entitled to praise for the way they have courageously and fearlessly and determinedly rendered this verdict.

Mr. Battle: Your Honor will give me an exception.

Verdict.

The Court: Yes.

The Clerk: Shall I excuse the jury, your Honor?

The Court: The jury can stay if they wish to. Mr. Cahill has moved for sentence. I would like to have the defendant stand and come up to the bar, and I ask if there is anything that he or his counsel wishes to say at this time.

Mr. Battle: If your Honor please, I have already made the motions indicated and take my exception.

The Court: Have you anything to say, Mr. Cahill, or do you wish to make a recommendation to the Court with respect to sentence?

905 Mr. Cahill: Yes, your Honor. I think I should call your Honor's attention to the fact that this defendant has previously been in difficulties with the law, having served a term or terms of imprisonment in the Federal Penitentiary at Leavenworth in connection with an indictment charging a conspiracy to obstruct the administration of the Selective Service Law in 1917.

906 In respect to the Government's recommendation as to sentence, I call the Court's attention to the fact that the penalty provided, the maximum penalty provided for each violation of the section here charged is five years and \$2,000 fine. I have no intention of going over the evidence in this case again, but it does seem to me that in addition to the violation of the passport law, that the concomitant violations of perjury and trifling and tampering with the vital statistics of our country should be taken into account. It is therefore the recommendation of the Government that a total sentence of five years and a fine of \$2,000 be imposed.

The Court: Is there anything that you wish to say?

Mr. Battle: Your Honor is familiar with all the facts. You heard all the evidence, and I submit it to your Honor.

The Court: I will impose a sentence on the defendant of two years and one thousand dollars (\$1,000) on each of the two counts of the indictment, to run consecutively.

Now, is there any question with respect to appeal or bail?

Mr. Battle: Yes, sir. If your Honor please, I am going to move for an arrest of judgment and I ask that the defendant be admitted to bail pending an appeal.

In that respect I will say, as your Honor probably knows, the defendant has been on bail for a number of months.

The Court: What is the bail at the present time?

Mr. Battle: \$7,500. He has been, with the knowledge of the District Attorney, out of the State on a number of occasions, and has always returned, and I can give your Honor my personal assurance that I am confident he will be here to answer to—

908

Mr. Cahill: I raise no question as to the adequacy of the amount. Having regard, however, to the rules of the Supreme Court, I do not feel on behalf of the Government that there is a substantial question involved within the meaning of the rules. However, the granting of bail is discretionary with your Honor, and that is my position.

The Court: I am frank to say, Mr. Battle, that on the evidence that I have heard, that I have considerable difficulty in finding any substantial question that could be urged on an appeal from this judgment. But in view of the statement that you have made that you intend to take an appeal and that there may be some question which can be argued in a higher court, I am disposed to allow the defendant to go out on bail at \$7,500, the bail which I understand he is now on.

909

Mr. Battle: Yes.

The Court: On the understanding that he will immediately take his appeal and perfect that appeal in accordance with the rules of the Supreme Court in cases of this kind.

Mr. Battle: That will be done, your Honor.

The Court: And I am willing to permit him to surrender on Wednesday of this week.

910

Government's Exhibits.

Mr. Battle: Wednesday of this week, yes, sir. Until then you will—

The Court: In the criminal part on the third floor.

Mr. Battle: Yes.

The Court: And in the meantime you should take your appeal and see that the bail bond is filed and approved.

Mr. Battle: That will be done, your Honor. Thank you.

The Court: I want again—not to thank the jury because I don't think that any of you want any thanks for serving as jurors in this case, but I think you have done your

911 full duty and I think you have done it promptly.

GOVERNMENT'S EXHIBITS.

Government's Exhibit 1 for Identification.

(Is the same as Government's Exhibit 16 in evidence.)

Government's Exhibit 1a for Identification.

912

(Is the same as Government's Exhibit 16a in evidence.)

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145182

PASSPORT APPLICATION

[FORM FOR NATIVE CITIZEN]

Edition of 1934

PASSPORT
ISSUED

SEP 1 1934

130

BROWDER
EHRLE
RUSSELL

(To be printed in full by applicant for passport)

Passport No.

Seen and (and born) corrected

The legal fee for a passport is nine dollars in currency and one dollar for execution of the passport.

No total fee is \$10.00. It is unnecessary to pay any other fee to any person in connection with the filing out or execution of this application or for obtaining the passport. The clerk of court or Passport Agent before whom this application is executed will give the applicant all necessary information and guidance.

UNITED STATES OF AMERICA
STATE OF NEW YORK
COUNTY OF NEW YORK

I, E. Russell Browder, a NATIVE CITIZEN of the UNITED STATES, hereby apply

to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Wichita

Kansas, on May 20, 1891, that I was never married (A woman must insert date of such marriage)

that my father Wm Browder was born at Kentucky

and is now residing at 1601 N. Howell, Longwood, Mo.

(The portion in this block to be filled in only by a person whose father was not born in the United States)

My father emigrated to the United States on or about _____, resided continuously in the United States from 1 _____ to 1 _____, at _____, and was naturalized as a citizen of the United States before the _____ Court of _____ at _____

I am domiciled in the United States, my permanent residence being at 2714 Wallace Ave. in the city of New York, State of New York

I have not taken an oath of allegiance to, or been naturalized as a citizen or subject of any foreign State. (If applicant took oath of allegiance to, or was naturalized in a foreign State, a supplementary statement, under oath, should be attached)

(The portion in this block to be filled in by a woman who is married to an alien and by a person whose father was not born in the United States)

I have resided outside the United States at the following places for the following periods:

(Name each country and length of stay in each)

from _____ to _____ (Departure from U.S.)
from _____ to _____ (Return to U.S.)

My last passport was obtained from _____

(Insert name, title or position of officer, agent)

on _____ (Date)

and is submitted herewith for cancellation.

(Give disposition of passport if it cannot be submitted)

I am about to go abroad temporarily and intend to return to the United States within _____ months.

France, England, Germany, France

(Name countries to be visited)

(Object of visit)

I request that my passport be issued for _____

who was born at _____ on _____

to whom I was married on _____

Her present address is _____

PORTION IN THIS BLOCK MUST BE FILLED IN ON OR AFTER SEPTEMBER 22, 1932

My (wife's) maiden name was _____, and (I) (she) _____

previously married on _____

My (her) former husband, _____, was born _____

at _____ (City and State of country) _____

_____ (Name of former husband) _____

[My wife emigrated to the United States on or about _____ and (her father) (her former husband)

was naturalized as a citizen of the United States before the _____ Court of _____

as shown by the accompanying Certificate of Naturalization. Since naturalization she has resided abroad at the following places

for the following periods: _____

PORTION IN THIS BLOCK MUST BE FILLED IN BY WIFE OF NATURALIZED CITIZEN ON OR AFTER SEPTEMBER 22, 1922

My (wife's) maiden name was WAGNER, and (I) (she) ☒ was ☐ was not previously married on _____

My former husband, _____, was born at _____ (City and State of _____) _____ (Date)

My former husband, _____, was divorced on _____ (Date)

AMENDED 9/26/24
The former is a
respondent in the
case of
R. B. SEYMOUR
U.S. DISTRICT COURT
for the District of Columbia

[My wife emigrated to the United States on or about _____ and (her father) (her former husband) _____ was naturalized as a citizen of the United States before the _____ Court of _____ (Portion in brackets not to be filled in if wife claims citizenship through birth in the United States)]

as shown by the accompanying Certificate of Naturalization. Since naturalization she has resided abroad at the following places for the following periods: [Name each country visited and the length of stay in each]

from _____ (Departure from U.S.)

from _____ (Names of countries visited)

I request that my passport include my minor children as follows whose photographic likeness is attached hereto:

born at _____ on _____ residing at _____

born at _____ on _____ residing at _____

born at _____ on _____ residing at _____

(Name in full) (Place and State or country) (Date)

PASSPORT FEE REC'D
 (Return to U.S.)
 1934

\$10.00 fee received by _____

EXHIBIT "A" (P. 1)

No. _____
 Seen and (had been) canceled
 issued at Washington

I solemnly swear that the statements made on both sides of this application are true and that the photograph attached hereto is a likeness of me.

OATH OF ALLEGIANCE



I, Frederick Browder, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Sworn to before me this UG day

(Signature of applicant)

SEAL OF
PASSPORT
AGENCY

of Y. N. Y.
Agent of the Department of State.

DESCRIPTION OF APPLICANT

Height 5 feet, 7 inches. Age 43 years.

Hair Brown

Eyes Blue

Distinguishing marks or features None

(Note any facial marks or scars by which applicant may be identified)

Place of birth Wichita Kansas

(City and State)

Date of birth May 20, 1891

(Month, day, and year)

Occupation Journalist

I intend to leave the United States from the port of New York

(Port of departure)

sailing on board the El de France

(Name of ship)

ON

Sept. 8

(Date of departure)

1924

ADDRESS

I request that my passport be mailed to the following address:

Name

Number and Street

City and State

(Note.—A passport will not be mailed to a hotel address unless the hotel is the applicant's place of permanent residence.)

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the affidavit hereinbefore set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further,

I solemnly swear that I have known the applicant personally for 39 years.

If witness has been issued a passport, give number and date of issue or approximate date of issue.

No. _____ Date of issue _____

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

Sworn to before me this 31 day

of Y. N. Y. 1924

James H. Browder
Agent of the Department of State.



Signature should not be affixed until requested by an appropriate official of the Passport Agency.

Signature should not be affixed until requested by an appropriate official of the Passport Agency.

I solemnly swear that I have known the applicant personally for 39 years.

If witness has been issued a passport, give number and date of issue or approximate date of issue.

No. _____ Date of issue _____

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

"Sworn to before me this _____ day

of _____ 19____

James H. [Signature]
Agent of the Department of State.



"This passport will not be valid unless executed before an agent of the Department of State, or a clerk of a Federal court or a State court having jurisdiction."

PLEASE NOTE.—As the Department of State will not upon this application promptly, inquiry concerning it should be made only in case of emergency.



Two photographs (duplicates) are required; one to be attached to the application in the space designated above, and the other, bearing the signature of the applicant, to accompany the application unattached. A group photograph should be used if more than one person is to be included in the passport. Photographs must be on thin paper, should have a light background and be not over 3 by 3 inches nor less than 2½ by 2½ inches in size.



Signature should not be affixed until requested by appropriate official of the Passport Agency.

EXHIBIT "A" (p. 2)

GOVERNMENT EXHIBIT 3.

DEPARTMENT OF STATE

Renewal Series No.

Passport No.

Issued on

Issued at

Washington, D. C.

210

451933

Nov. 19, 1931

APPLICATION FOR RENEWAL OF PASSPORT

In conformity with the Rules and Regulations prescribed by the President and the Secretary of State, pursuant to law, I, the undersigned, hereby apply for a renewal of the period of validity of my passport, the number and date of which appear above:

I hereby declare that—

(Use one of the two following lines, striking out the other.)

I was born in the United States.

I was born in _____ and (if my father) was naturalized in the year _____

(Insert name of country if born abroad)

(If not a citizen of the United States)

(This section must be filled in by all women, and by all those men whose passports bear the names of their wives.)

I was { never married. } My { wife } was born in { the United States. }

(Strike out the four following lines if never married)

and { was naturalized in the year _____ }
 { is an alien, a citizen of _____ }

(Strike out one of the above two lines)

Our marital status { has not been terminated. }

{ was terminated by (death) (divorce) in the year _____ }

(Strike out one of the above two lines)

(Date)

(This section must be filled in when the record in the preceding section shows that marriage occurred on or after September 22, 1922. A record of a man's previous marriage is not required.)

(Use one of the two following lines, striking out the other)

I (My wife) { was not previously married. }
 { was married to former husband on _____ }

(Strike out the three following lines if not previously married)

He was born in { the United States. }

(Insert name of country if born abroad)

and { was naturalized in _____ }

(Insert date of naturalization)

{ is an alien, a citizen of _____ }

(Name of country)

The marital status was terminated by (death) (divorce) on _____

(Date)

(This section must be filled in by all persons who have acquired citizenship through marriage or naturalization and by an American woman who has been married to an alien.)

Since my present passport was issued I have been outside of the United States at the following places for the periods stated:

from _____ to _____
 from _____ to _____
 from _____ to _____

The purposes of my visits to the foregoing countries were as follows (give reason or reasons for stay in each country named):

EXHIBIT
 U. S. Dist. Court
 S. D. of N. Y.

RICHARDS
 ALBERT HENRY

(This section must be filled in by all persons who have acquired citizenship through marriage or naturalization and by an American woman who has been married to an alien.)

Since my present passport was issued I have been outside of the United States at the following places for the periods stated:

from _____ to _____
from _____ to _____
from _____ to _____

The purposes of my visits to the foregoing countries were as follows (give reason or reasons for stay in each country named):

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

DO NOT USE THIS SPACE

Application and passport submitted for Department's consideration
by _____ Agency, on _____
(Initials of agency) (Date)

Issued by _____ Agent, Department of State
(Initials of agent) Agency, on Nov 2, 1933
(Date)

For {one} years from {date of issue} expiration.
Until the 19th day of Nov., 1935
(Date when passport is being renewed)

\$5.00 fee received by _____ {attached to passport, deposited by agency.}

(Do not use this space)

NOV 1, 1933

RECEIVED
NOV 13 1933

5035

Government Exhibit 3. Page 2.

I am domiciled in the United States, and at present am in the United States, residing (together with those whose names appear in my passport) at 2515 W. Halsted St. City of Chicago,
(Street address)
 State of Illinois

I intend to leave the United States from the port of New York,
(Port of departure)
 sailing on board the _____, on _____, 193
(Name of ship) (Date of departure)

(Signature) Albert H. Richards
(I hereby declare that I personally affixed my signature appearing above)

Please mail passport to {above following} address:

Street _____

City _____

State _____

(Do not use the following lines)

REMARKS:

Agent of the Department of State.

3/2

GOVERNMENT EXHIBIT 3A.

PASSPORT APPLICATION

451933

[FORM FOR NATIVE CITIZEN]

EDITION OF 1931

The legal fee for a passport is five dollars, in currency, and one dollar for execution of the passport.

The fee is \$5.00. It is unnecessary to pay any other fee to any person in connection with the filing of or execution of this application or for obtaining the passport. The clerk of court or Passport Agent before whom this application is executed will give the applicant all necessary information and guidance.

UNITED STATES OF AMERICA
STATE OF NEW YORK
COUNTY OF NEW YORK

I, Albert Henry Richards, a NATIVE CITIZEN OF THE UNITED STATES, hereby apply
(Name in full)

to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Deshkesh
(See footnote) (City or town)

Wisconsin, on Sept. 4, 1895, that I was never married
(State) (Date) (A woman must insert date of each marriage)

that my father, Richard H. Richards, was born at Milwaukee Wisc.
(A woman who has been married must insert husband's name) (City or town) (State or country)

and is now residing at Deceased January 1907
(Give present address. If deceased, give date of death)

(The portion in this block to be filled in only by a person whose father was not born in the United States)

My father emigrated to the United States on or about _____ and resided continuously
in the United States from 1 _____ to 1 _____, at _____ and was naturalized as a
citizen of the United States before the _____ Court of _____
(Name of court) (District, State, county)
at _____ on _____
(City and State) (Month) (Day) (Year)

I am domiciled in the United States, my permanent residence being at Arbitus Road
(Street address)
in the city of Huguenot Park, Staten Island, N. Y.

(The portion in this block to be filled in by a woman who is married to an alien and by a person whose father was not born in the United States)
I have resided outside the United States at the following places for the following periods:
(Name each country and length of stay in each)

_____ from _____ (Departure from U. S.)
_____ from _____ to _____ (Return to U. S.)
(Names of countries)

My last passport was obtained from none on _____
(Washington or location of office abroad) (Date)
and is submitted herewith for cancellation _____
(Give disposition of passport if not now being submitted)

I am about to go abroad temporarily and intend to return to the United States within _____ with the
purpose of residing and performing the duties of citizenship therein.

I desire a passport for use in visiting the countries hereinafter named for the following purpose:

France, Germany, tourist

(Do not state "all countries")

I request that my passport include my wife _____, who was born
(See footnote) (Name in full)

at _____ on _____, and to whom I was married
(Place and State or country) (Date)

on _____ Her present address is _____
(Date of marriage) (City) (State) (Country)

PORTION IN THIS BLOCK MUST BE FILLED IN IF MARRIAGE TOOK PLACE ON OR AFTER SEPTEMBER 22, 1922

My wife's maiden name was _____, and she _____
previously married on _____
(Date of each previous marriage)

Her former husband's full name of former husband _____
at _____ he died _____
(City and State or country) (they were divorced) on _____

[My wife emigrated to the United States on or about _____ and (her father) (her former husband)]

was naturalized as a citizen of the United States before the _____ Court of _____
(Portion in brackets not to be filled in if wife claims citizenship through birth in the United States)

130 RICHARDS ALBERT HENRY
(Surname) (First name) (Middle name)
(To be printed in full by applicant for passport)

Passport No. _____

Seen and (and born) certified _____

BIRTH CERTIFICATE SE.

FILED
NOV 20 1931

U.S.
G.
JA

Her former husband's full name of former husband
at (City and State or country) and he died they were divorced on (Date)

[My wife emigrated to the United States on or about _____ and (her father) (her former husband) was naturalized as a citizen of the United States before the _____ Court of _____ at _____ on _____ (Month) (Day) (Year) as shown by the accompanying Certificate of Naturalization. Since naturalization she has resided abroad at the following places for the following periods: (Name each country visited and the length of stay in each)]

from _____ to _____ (Departure from U. S.)
from _____ to _____ (Return to U. S.)
(Names of countries visited)

I request that my passport include my minor children as follows:

born at _____ on _____, residing at _____
born at _____ on _____, residing at _____
born at _____ on _____, residing at _____
(Name in full) (Place and State or country) (Date)

I solemnly swear that the statements herein made are true.

See receipt to _____

FEE RECEIVED NOV 19 1931

39955

Government Exhibit 3A Page 2.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Albert H. Richards
(Signature of Applicant)



NOV 18 1931 day

Frank Ealey
Agent of the Department of State.

DESCRIPTION OF APPLICANT

Height 5 feet, 7 inches. Age 36 years.

Hair brown Eyes blue

Distinguishing marks or features none

(Note any facial marks or scars by which applicant may be identified)

Place of birth Oshkosh, Wis.

Date of birth Sept. 4, 1895

(City and State)

(Month, day, and year)

Occupation Musician

I intend to leave the United States from the port of New York

sailing on board the Rotterdam

(Name of ship)

on

Nov 20, 1931

(Date of departure)

ADDRESS

I request that my passport be mailed to the following address:

Name _____

No. and Street _____

City and State _____

[Note.—A passport will not be mailed to a local address unless the hotel is the applicant's place of permanent residence.]

BW

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature herein; that I know the applicant who executed the affidavit hereinbefore set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further,

I solemnly swear that I have known the applicant personally for 7 years.

Beatrice Oberlander
(Name of witness)

145 West 71st St., 40th Ct.
(Residence address of witness)

(If lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.)

* Sworn to before me this NOV 18 1931 day

Frank Ealey
Agent of the Department of State.



*Sworn to before me this NOV 18 1937 day

of Albert H. Richards in
County of New York State of New York
Department of State.



(Not a
Passport
Agent)



in
co



Two photographs (duplicates) are required, one to be affixed to the application in the space designated above, and the other, bearing the signature of the applicant, to accompany the application unattached. A group photograph should be used if more than one person is to be included in the passport. Photographs must be on thin paper, should have a light background and be not over 3 by 3 inches nor less than 2½ by 2½ inches in size.

*This application will not be valid unless executed before an agent of the Department of State or before a clerk of a Federal court or a State court having jurisdiction over the jurisdiction.

PLEASE NOTE.—As this Department of State will act upon this application promptly, inquiry concerning it should be made only in case of emergency.

U. S. GOVERNMENT PRINTING OFFICE: 1937

1-1708

3A/2

GOVERNMENT EXHIBIT 4.

The original and each copy of an application for a passport must have attached to it a copy of the applicant's photograph. A loose, signed photograph of the applicant must accompany the application. The photographs must be on thin paper, should have a light background, and be not less than three inches in size.

Fee for passport, one dollar.
Fee for executing application, one dollar.

[Edition of 1918.]

[FORM FOR NATURALIZED CITIZEN.]

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK.

I, Nicholas Dozenberg, a NATURALIZED AND LOYAL CITIZEN
OF THE UNITED STATES, hereby apply to the Department of State, at Washington, for a passport,
accompanied by my wife,

(Name and place of birth.)

I solemnly swear that I was born at Riga, Russia now Latvia
on Nov. 15, 1882; that I emigrated to the United States, sailing from
Stockholm about June 1904; that I resided 16
years, uninterruptedly, in the United States, from 1904 to 1921 at Boston, Mass.
and New York, N.Y.; that I was naturalized a citizen of the United States before the
District of the United States
at Boston, Mass. February 6, 1911,
as shown by the Certificate of Naturalization, with which I am the IDENTICAL PERSON
described in said Certificate; that I have resided in the United States since my naturalization at
the following places for the following periods:

None

that I am domiciled in the United States, my permanent residence being at 1309 Tremont
Rochury Boston, in the State of Massachusetts, where I follow the
occupation of machinist; that I am about to go abroad temporarily, and

intend to return to the United States within three (months) with the purpose of
residing and performing the duties of citizenship therein; and that I desire a passport for use in visiting
the countries hereinafter named for the following purpose:

Latvia (Name of country.) Temporary stay for visit friends (Object of visit.)
Estonia (Name of country.) Disposal of property in the estate. (Object of visit.)
British Isles, Denmark, Sweden (Name of country.) Travel (Object of visit.)

I intend to leave the United States from the port of New York
sailing on board the Hellis Olaf on March 17, 1921

DEPARTMENT OF STATE
PASSPORT
ISSUED
APR 12 1921
WASHINGTON

Latvia
(Name of country.)
Esthonia
(Name of country.)
British Isles, Denmark, Sweden
(Name of country.)
Temporary stop for next friends
(Object of visit.)
Disposal of property in estate
(Object of visit.)
Travel
(Object of visit.)

I intend to leave the United States from the port of *New York*
(Port of departure.)
sailing on board the *Ulling Out* on *March 17*, 192*1*
(Name of vessel.) (Date of departure.)
My last passport was obtained from *none* on _____
and was _____
(Disposition of passport.)

OATH OF ALLEGIANCE.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God.

Nicholas Dozenberg
(Signature of applicant.)
MAR 11 1921

Sworn to before me this *MAR 8 - 1921* day
of _____, 19____

[SEAL OF
PASSPORT AGENCY.]

Philip H. Ahren
Agent, Department of State.

(OVER.)

CLP

Government Exhibit 4. Page 2.

DESCRIPTION OF APPLICANT.

(38)
 Age: 30 years
 Stature: 5 feet 8 1/2 inches, Eng.
 Forehead: medium
 Eyes: Blue
 Nose: medium
 Distinguishing marks: none
 Mouth: mounted
 Chin: medium
 Hair: brown
 Complexion: fair
 Face: spare

AFFIDAVIT OF IDENTIFYING WITNESS.

I, Katherine Dozenberg, solemnly swear that I am a ^{native} naturalized citizen of the United States; that I reside at 1309 Tremont Street Roxbury Boston; that I have known the above-named Nicholas Dozenberg personally for eleven (11) years and know ^{him} to be the identical person referred to in the within-described certificate of naturalization, and that the facts stated in ^{his} affidavit are true to the best of my knowledge and belief

Katherine Dozenberg
 House keeper

(Firm, corporation, or organization, if any.)

(Business or professional address.)

Sworn to before me this 24th day of 8-1914

[SEAL]

Philip W. Cohen
 Passport Agent, Department of State.

Applicant desires passport to be sent to the following address:

Send to Nicholas Dozenberg
 Passport Agent, M. Stein, 271 E. 14th St.
 Custom House New York City.

A second duplicate of the photograph to be attached hereto must be sent to the Department with the application to be affixed to the passport with an impression of the Department's seal.

A second duplicate of the photograph to be attached
hereto must be sent to the Department with the applica-
tion to be affixed to the passport with an impression of the
Department's seal.



4/2

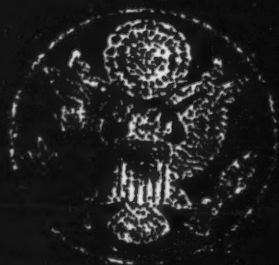
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313

GOVERNMENT EXHIBIT 5.

No 145182

PASSPORT



UNITED STATES OF AMERICA

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314

Government's Exhibit 5, Page 2.

PRESENT THIS PASSPORT WITH YOUR APPLICATION FOR A NEW PASSPORT

IMPORTANT

The person to whom this passport is issued must sign his name on page three immediately on its receipt. The passport is **NOT VALID** unless it has been signed.

The bearer should also fill in blanks below as indicated.

Signature of bearer

Bearer's address in the United States

Bearer's foreign address

IN CASE OF DEATH OR ACCIDENT NOTIFY

Name of person to be notified

Exact address

CAUTION

This passport is a valuable document. It should not be altered in any way. Due care should be taken to see that it does not pass into the possession of an unauthorized person. If it is lost or destroyed the fact and circumstances of the loss should be immediately reported to the Passport Division, Department of State, or to the nearest American Consulate, or, in an outlying possession of the United States, to the chief executive thereof, and to the local police authorities. New passports in such cases can be issued only after exhaustive inquiry.

NO 145182

Passport

United States of America
Department of State



L. J. W. 2

10-2-89 72

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I, the undersigned, Secretary of State
of the United States of America, hereby
request all whom it may concern to per-
mit safely and freely to pass, and in case
of need to give all lawful aid and protec-
tion to

EARL RUSSELL BROWDER

a citizen of the United States.

The bearer is accompanied by his

Wife XXX
Minor children XXX
XXX
XXX

Should mention my
name and the
name of the
Department of
State

137 131

Description of bearer 12

Height 5 feet 7 inches

Hair BROWN

Eyes BLUE

Distinguishing marks or features

XXX
XXX
XXX

Place of birth WICHITA,
KANSAS

Date of birth MAY 20, 1891

Occupation JOURNALIST

XXX
XXX

Earl Russell Browder
Signature of bearer

This document is not valid unless signed by the
bearer in whose name it was issued.

BLANK PAGE

Photograph of bearer

Charles Russell Brender



**ATTACHED
OF STATE
WASHINGTON**



This passport is good for travel in all countries unless otherwise limited.

This passport is valid for two years from the date of issue unless limited to a shorter period.

*This passport is valid for travel in
SPAIN*



Note Renewal on page 6



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*Amendments and extensions*DEPARTMENT OF STATE
PASSPORT AGENCY

NEW YORK

NO.

4011

RENEWED

B 2 - 1937

EXPIRES

April 1, 1938

BY AUTHORITY OF THE SECRETARY OF STATE

IRA F. MOY

PASSPORT AGENT

Chas. W. Mason

NOVEMBER 26, 1937.

THIS PASSPORT IS AMENDED

READ: THE BEARER OF THIS
PASSPORT IS A NEWSPAPER CORRESPONDENT
ONLY ASSIGNED TO SPAIN
AND HIS PASSPORT IS THEREFORE
VALID FOR TRAVEL IN THAT
COUNTRY.

R. B. ...
SHEP. ...

*Kia**1-10-1937**504**E. A. Sigmund**Stamps des ...**Am ... mellen Einreise in ...**in ...**12-10-1937**Deutsches Generalkonsulat**Mund**(Signature)**(Signature)**(Signature)**(Signature)**(Signature)**(Signature)**(Signature)**(Signature)*

DETROIT
16 SEP 1934
PRIJEZ

DEPARTMENT OF STATE
WASHINGTON

American citizens
traveling in disturbed
areas of the world are
requested to keep in
touch with the nearest
American Diplomatic or
Consular Officers.

AMERICAN CONSUL GENERAL
PARIS OFFICE
September 21-1934
THIS PASSPORT
IS VALID FOR
FRANCE

of America at Paris, France

Carl R. Bratton

Transit VISA

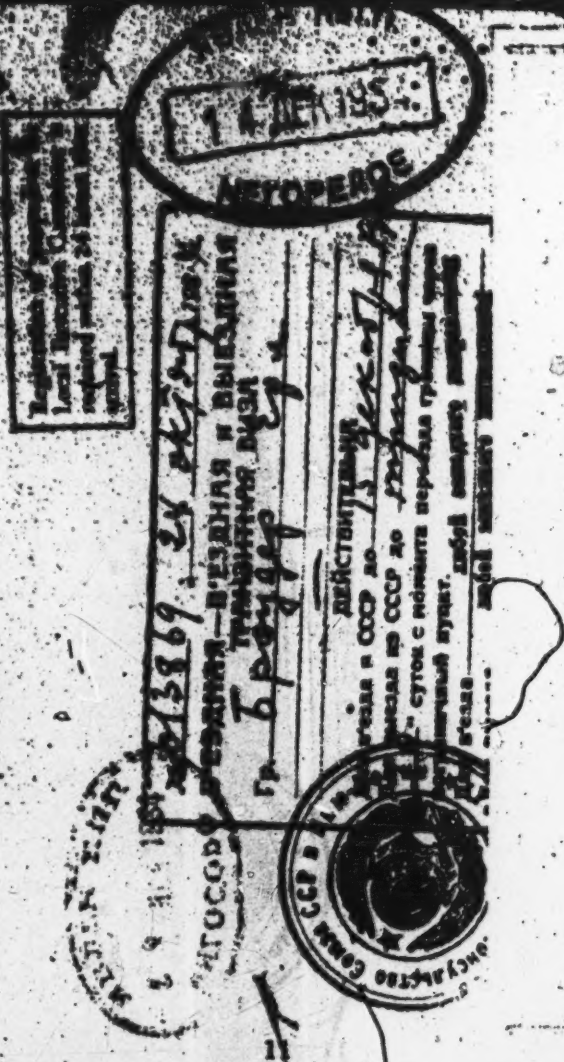
Issued to: Carl R. Bratton
Nationality: United States
Valid from: 1934-8-24
to: 1935-8-24
For: journeys to Lithuania
and back with right to stop over
in Lithuania 4 days each time.
Object of journey: Transit
New York 1004-X mtr. 1d

[Signature]
P. DANIELSON
Lithuanian Consul General
Paris



DETROIT
16 SEP 1934
PRIJEZ

This additional sheet forms a part of Passport
No. 145182
Issued September 1, 1934



This additional sheet forms a part of Passport
No. 145182
Issued September 1, 1934



LOUI PERREA
DONALD ECKHARDT

EL CONSUMO GENERAL

Handwritten:

СЪДЪЖАНИЕТО НА ТЪЯНА

№ 1230
ЗАПИСНИК
1. АИО Исследования
2. Проводим в 12.11.19
3. Проводим в 12.11.19
4. Проводим в 12.11.19
5. Проводим в 12.11.19
6. Проводим в 12.11.19
7. Проводим в 12.11.19
8. Проводим в 12.11.19
9. Проводим в 12.11.19
10. Проводим в 12.11.19

• 13



Konsulat R. P.
w New Yorku

Pobres

WIZA PRZEJAZDOWA N

4366.

Johnstonbury [unclear] 1705/12/20

[illegible]

W 3.14 1951

Przebieg choroby: *[illegible]*

EXHIBIT

Wife was in Jn. 1952

LA CONSULA GENERAL DE



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EMBARQUEMENT

6 DEC 32

DEBARQUEMENT

14 NOV 1934

DEPTOVICE
11.1.35
OAIJED

EMBARQUEMENT
15 NOV 1934
Commissariat
LE HAVRE

VISA valable pour la durée
du présent passeport et un
maximum de deux ans.
Le titulaire a déclaré ne
pas se rendre en France pour
y occuper un emploi salarié.

New York, le 25 OCT 1934

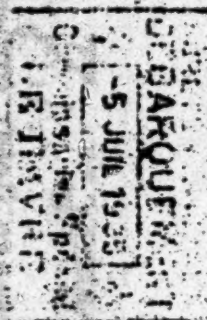
Pr. le Consul Général, D. O.



EMBARQUEMENT
12 NOV 1934
LE HAVRE

OUT. A. No 186
ETIENNE L. SI
F. o. P. adies
PECC. 3.31

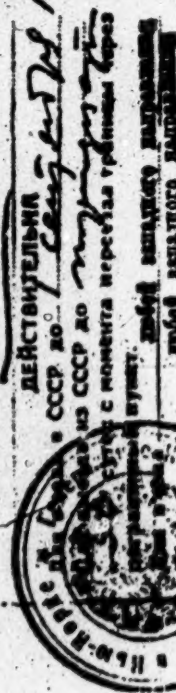
Visa



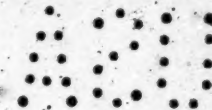
Register this passport at the
Local Executive Committee is
required within 24 hours after
arrival.



№ 34192 25. июль 1935
ВЪЕЗДНАЯ - ВЪЕЗДНАЯ И ВЫЕЗДНАЯ
ТРАМПЛИННАЯ ВИЗА
г. Бразил

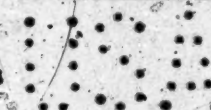


This additional sheet forms a part of Passport
No. 145182
Issued September 1, 1934



Visa

Visa



Бразил 4-1

№ 4699

ВЪЕЗДНАЯ - ВЪЕЗДНАЯ И ВЫЕЗДНАЯ
ТРАМПЛИННАЯ ВИЗА
г. Бразил

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WISCONSIN
MILWAUKEE
JAN 30 1938
HEIDENHOFER

BRACLAJ
10 N 138
OBJEZO

IN IV. 1938
OD...

WISCONSIN
MILWAUKEE
JAN 30 1938
HEIDENHOFER

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JAN 30 1938
HEIDENHOFER

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Government Exhibit 5. Page 14.

Klaus

ÖSTERREICH
AUS 18 1937
AUS 13 APR 37
L. 101 PC

Gebühr \$2.-



ÖSTERREICH
HN: 14 MZ 7
FELDKIRCH

ÖSTERREICH
- 11. MZ
FELDKIRCH

24

OR. 18. MZ
18. MZ
Girelle

propre [illegible] [illegible]

COMMISSARIAT-SPECIAL
EMBARQUEMENT
24 AVR. 1937
CHERBOURG

VISA valable pour la durée
du présent passeport et un
maximum de deux ans.
Le titulaire a déclaré ne
pas se rendre en France pour
y occuper un emploi

New York, le 26 FEB 1937
Pr. le Consul Général, p. o.



ARTICLE: 79
PERÇU \$2.25

COMMISSARIAT SPECI
VU au DÉBARQU
10 MARS 1937
25
CHERBOURG

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Konsulat R.P. w Now Yorku
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 od daty
 Wym
 Do

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Comisaría General
de Emigración y Pasajes
Zona. Primera
PRAT DE LLIBRECIAT
FEB 13 1938
SINDELA TA

Carta en 550 p.f. y 1/2 de lares
20.000

MINISTERIO DE CONTRATACIONES Y MONEDA

Autorizado para salir de España con

pasaje y equipaje
pasaje y equipaje
EL INSPECTOR

BANCO DE ESPAÑA
3-1 ENE 1938
CARTAS OFICIALES DE CONTRATACIONES Y MONEDA

Autorizado para salir de España

breves 31 de Enero 1938

El Ministro de la Gobernación

MINISTERIO DE LA GOBERNACION
13

REPUBLICA DE ESPAÑA
DEPARTAMENTO DE LA REPU...
SALIDA
8 FEB. 1938
LA JUNQUERA
CATALUNYA

Salir con equipaje y 1/2 de lares
pasaje y equipaje
pasaje y equipaje

ADUANA DE LA JUNQUERA
8 FEB. 1938
ESPAÑA

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DEPARTMENT OF STATE
WASHINGTON

November 26, 1937
(Date)

An additional sheet containing 25 pages has been added to this passport.

BY AUTHORITY OF THE
SECRETARY OF STATE

R. B. SHIPLEY
Chief, Passport Division.

Nathl. P. Hibbs

1937

[Handwritten signatures and stamps]

1937

URZED CELNY - STOLPCACH

Zawlede... 25/...

[Large handwritten signature]

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ABSTRACTS FROM PASSPORT REGULATIONS

1. Passports are issued in the United States by the Secretary of State, through the Passport Division, Department of State, Washington, D. C. Applications for passports should be made in person to clerks of Federal courts, clerks of State courts having jurisdiction in naturalization matters, or to passport agents of the Department of State. Passport agents of the Department of State are stationed at New York, Boston, New Orleans, Chicago, San Francisco, and the Department of State, Washington, D. C. Applications should be filed from two to four weeks before the passport is required, depending upon the distance from Washington.

2. Americans residing or sojourning abroad should apply for passports through the nearest American consulate.

3. Applications for passports by persons in the Virgin Islands, Hawaii, Puerto Rico, Guam, American Samoa, or the Philippines, should be made to the chief executives of those islands.

4. Under the provisions of the Act of May 16, 1932, American passports are valid for two years from the date of issue unless limited to a shorter period. Such passports may be renewed under regulations prescribed by the Secretary of State for a period not to exceed two years but the final date of expiration shall not be more than four years from the original date of issue.

5. The fee for a passport, including \$1.00 for the execution of the application and \$9.00 for the passport, is \$10.00. The fee for the renewal of a passport is \$5.00.

6. The regulations provide that when the presumption of having ceased to be an American citizen has arisen against a naturalized American citizen under Section 2 of the Act of March 2, 1907, because of protracted foreign residence, his passport shall not be renewed until he shall have submitted to the Department of State or to a diplomatic or consular officer of the United States, evidence showing that the reason for such foreign residence comes within the rules prescribed by the Secretary of State whereunder such presumption may be overcome.

7. Americans making their homes or residing for a prolonged period abroad should register at the nearest American consulate.

DEPARTMENT OF STATE

Renewal Series No. _____

Passport No. 145182Issued on Sept 1, 1934Issued at Washington, D. C.

APPLICATION FOR RENEWAL OF PASSPORT

I, the undersigned, hereby apply for a renewal of the period of validity of my passport, the number and date of which appear above:

I hereby declare that—

(Use one of the two following lines, striking out the other)

I was born in the United States.

I was born in _____ and (I) (my father) was naturalized in the year _____

(Insert name of country if born abroad)

(If naturalized, insert date of naturalization)

I ~~have~~ taken an oath of allegiance to _____ a foreign State.

(If applicant took an oath of allegiance to, or was naturalized in a foreign State, a supplementary statement, under oath, should be attached)

THIS SECTION MUST BE FILLED IN BY ALL WOMEN, AND BY ALL THOSE MEN WHOSE PASSPORTS BEAR THE NAMES OF THEIR WIVES.

I was ☒ never married.I was ☐ married in the year _____My ☒ wife,My ☐ husband,was born in ☒ the United States.

(Strike out above if never married)

(Insert name of country if born abroad)

(Strike out the four following lines if never married)

was naturalized in the year _____

and

is an alien, a citizen of _____

(Fill in appropriate space)

Our marital status ☒ has not been terminated.Our marital status ☐ was terminated by (death) (divorce) in the year _____

(Strike out one of the above two lines)

(Date)

THIS SECTION MUST BE FILLED IN WHEN THE RECORD IN THE PRECEDING SECTION SHOWS THAT MARRIAGE OCCURRED ON OR AFTER SEPTEMBER 21, 1922. (A record of a man's previous marriage is not required.)

(Use one of the two following lines, striking out the other)

I (My wife) ☒ was not previously married.I (My wife) ☐ was married to former husband on _____

(Date of each previous marriage)

(Strike out the following lines if not previously married)

He was born in ☒ the United States.and ☐ was naturalized on _____

(Insert date of naturalization)

(Insert name of country if born abroad)

is an alien, a citizen of _____

(Name of country)

The marital status was terminated by (death) (divorce) on _____

(Date)

THIS SECTION MUST BE FILLED IN BY ALL PERSONS WHO HAVE ACQUIRED CITIZENSHIP THROUGH MARRIAGE OR NATURALIZATION.

Since my present passport was issued I have been outside of the United States at the following places for the periods stated:

from _____	to _____
from _____	to _____
from _____	to _____

The purposes of my visits to the foregoing countries were as follows (give reason or reasons for stay in each country named):

(DO NOT USE THIS SPACE)

Application and passport submitted for Department's consideration

by _____ Agency, on _____

(Initials of agency)

(Date)

Agent, Department of State

Renewed by _____

(Initials of agency)

Agency, on _____

(Date)

For _____ years from _____

FEB 2 - 1937

(Do not use this space)

FEB -4 1937

BROWDER EARL ROSSELL

0 - app'd 9/1/34 Sec 130 - Johnson Richard cons 6/8/36
 30 - Browder Earl Ref: 130 Barger Harry

130 - appl 9/1/34 Sea
Bo. Brando East

The marital status was terminated by (death) (divorce) on _____ (Date)

THIS SECTION MUST BE FILLED IN BY ALL PERSONS WHO HAVE ACQUIRED CITIZENSHIP THROUGH MARRIAGE OR NATURALIZATION.

Since my present passport was issued I have been outside of the United States at the following places for the periods stated:

from _____ to _____
from _____ to _____
from _____ to _____

The purposes of my visits to the foregoing countries were as follows (give reason or reasons for stay in each country named):

(DO NOT USE THIS SPACE)

Application and passport submitted for Department's consideration
by _____ Agency, on _____ (Date)

Renewed by _____ Agency, on _____ (Date)
For ~~(one)~~ ^(two) years from ~~(today's date)~~ ^(date of expiration)

Until the _____ day of _____, 193
Edward Brando
(Agent, Department of State)

\$5.00 fee received by _____ (Signature)
(attached hereto)
(deposited by agency.)

(Do not use this space)

FEB - 4 1937

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The names listed below should be excluded from my passport as those members of my family will not accompany me on foreign travel now contemplated and for which I herein request renewal of my passport.

Wife _____ Minor child _____

Following are the names and dates of birth of my minor children who are over 18 years of age, who are included in my passport and who will accompany me on my contemplated travel abroad for which I herein request renewal of my passport:

(Name)

(Date of birth)

I am domiciled in the United States, and at present I am in the United States residing (together with those whose names appear in my passport) at _____

City of Yonkers State of New York

I intend to leave the United States from the port of _____
sailing on board the French Line on Feb, 1937

(Signature)

(I hereby declare that I personally affixed my signature appearing above)

Please mail passport to ^{above}_{following} address:

Street _____

City _____

State _____

(Do not use the following lines)

REMARKS:

Applicant maintains he will travel to France Switzerland and U.S.S.R. for business for self. occupation Journalist

This passport not
valid for travel in
SPAIN

Edward W. Anderson

Agent of the Department of State

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333

Government's Exhibit 7.

997

DAILY WORKER
50 EAST 13TH STREET
New York, N. Y.

Algonquin 4—7954

November 24, 1937

R. B. Shipley, Chief,
Passport Division,
Department of State,
Washington, D. C.

998

Dear Miss Shipley:

We request that the Department of State issue a passport to Mr. Earl Browder, good for travel in Spain, inasmuch as we are sending him there to replace our special correspondent, Seymour Waldman; who has just returned from there.

Mr. Browder is employed by the Daily Worker and has been a frequent contributor to our paper in the past, as well as to numerous other newspapers and magazines.

He will be in Spain for a period of approximately two months.

Sincerely yours,

999

(Signed) C. A. HATHAWAY
Editor.

CAH/VT

The Newspaper For Workers—Daily and Sunday Editions

(Government's Exhibit 7 has a notation thereon as follows:

Department of State
Washington

AMENDED Nov. 26, 1937 TO read:

1000

Government's Exhibits.

1. The bearer is a newspaper correspondent assigned to Spain and his ppt. is valid for travel in that country.

BY AUTHORITY OF THE SECRETARY OF STATE

R. B. SHIPLEY
Chief, Passport Division.
Department of State
Washington, D. C.

1001

Government's Exhibit 8.

THE NEW YORK AGENCY

9/1/34

* * * *
145182 Browder, Earl Russell.
* * * *

1002

Government's Exhibit 9.

Original manifest of the Steamship Berengaria arriving
at New York, April 30, 1937, reflecting the arrival of Earl
Russell Browder.

Government's Exhibit 10.

Original manifest of the Steamship Aquitania arriving
at New York February 15, 1938, reflecting the arrival of
Earl Russell Browder.

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Nº 525715

IF BODIES OR DEVIATED, RETURN TO PURSER OF VESSEL.

BERENGARIA

Port of NEW YORK

I, the undersigned, declare that I am a resident of the country of USA

that I resided in said country from May 20, 1891, 1891, to present, 19__;

that I reside at No. 7 Street Highland Place City Yonkers State N.Y.
(House) (Number) (Indirizzo) (Número) (Strasse) (Rue) (Strada) (Calle) (Wady) (Vile) (Citta) (Ciudad) (Stadt) (Tays) (Estado) (Estado)

that I am a citizen of the country of USA; that I last sailed from the United

States on S. S. Berengia on March 3, 1937, from New York;
(Country) (Vessel) (From) (To) (Date) (Date) (Date) (Date) (Date) (Port) (Port) (Port)

that I am accompanied by the following-named members of my family and household who are included in this declaration: None

that I and those who accompany me are all residents of the same country and our baggage is enumerated below:

BAGGAGE	NUMBER OF TRUNKS (Koffer) (Koffer)	HAND PACKAGES, VALISES, BAGS, ETC. (Handtaschen) (Valisen) (Taschen) (Koffer)	BALES, BOXES, BUNDLES (Kisten) (Kisten) (Cajas) (Cajas)	OTHER PACKAGES (Andere Pakete) (Autres colis) (Autri pacchi) (Demais bultos)	TOTAL PIECES OF BAGGAGE (Zusammen) (Totale)	LETTER UNDER WHICH BAGGAGE WILL BE PLACED ON FIRE
					<i>six</i>	<i>B</i>

TO BE FILLED OUT BY PASSENGER		FOR CUSTOMS OFFICER'S NOTATIONS ONLY	
Description of articles (Gegenstände) (Articles) (Artículos) (Articles)		Value	Duty
4 Souvenir rings	15 ⁰⁰		
Tape	5 ⁰⁰		
9 Paper & bonds wooden	5 ⁰⁰		
4 linen tablecloths	20 ⁰⁰		
Collection of Books (In. 1149)	50 ⁰⁰		
Box of phonograph records	5 ⁰⁰		
TOTAL OF THIS SHEET		\$100 ⁰⁰	
Carried forward from continuation sheet			
TOTAL DUTY OR FINE \$			

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JAN. 18 1940

EXHIBIT
U. S. Dist. Court
E. D. of N. Y.
JAN 18 1940

If more space is required, use continuation sheet, Customs Form 6043-Cont., which will be supplied by Power.

If more space is required, use continuation sheet, CUST-100.

Box of phonograph records

۵۰

EXHIBIT
U. S. Dist. Court
E. D. of N. Y.
JAN 18 1940

TREAD ON THIS SECRET

\$100⁰⁰

TOTAL OF THIS SHEET.....

Carried forward from continuation sheet

Carried forward from continuation sheet

TOTAL DECLARED

7/10.00

TOTAL DUTY OR FINE \$

DECLARATION OF RETURNING RESIDENT OF THE U. S.

I further declare that I have fully set forth herein all articles acquired abroad, timed or untimed, whether purchased or otherwise obtained, explained in my language or on any person or in the language of or on the persons named above accompanying me, that none of the said articles is for sale, and that not a centime has been given, or is to be paid in business, except as noted for sale; and that not a centime has been given, or is to be paid for articles purchased for, or on behalf of, the United States Government, the said articles being the property of the United States Government. I further declare that I have fully set forth herein all articles obtained, the said articles being the property of the United States Government. That this declaration is made with the knowledge that failure to declare any article acquired abroad or any false statement in regard thereto will subject me to personal penalties and the articles involved to seizure. I further declare that I have not during the past 30 days received an exemption from duty such as is allowed a returning resident of the United States, except as

Encl. 1

Declared to before me 1-20, 1934, and
baggage examined and found correct unless otherwise noted.

Number of packages examined: _____ and number of stamps _____

....., Inspector

Register stamp No. 2

DECLARATION OF NONRESIDENT OF THE U. S.

[illegible]

.....

VALUE AND DUTY AS NOTED ABOVE

Appraiser's Examiner.

Acting Deputy Collector,

3-381

GOVERNMENT EXHIBIT 12.

Customs Form 6033
TREASURY DEPARTMENT
Arts. 121, 417, 418, 882, C. R. 1981
March 1934

BAGGAGE DECLARATION AND ENTRY

BEFORE FILING OUT THIS DECLARATION READ CAREFULLY INSTRUCTIONS ON BACK OF THIS SHEET
IF SPOILED OR MUTILATED, RETURN TO PURSER OF VESSEL

No 638569

Name of Passenger E. J. BREIDER Vessel S.S. "AQUITANIA" Port of NEW YORK
(Name des Passagers) (Nom du passager) (Fahrer) (Vapour) (Arrival) (Hafen) (Port)
(Nomme di passaggere) (Nomme di passagere) (Fährer) (Vapour) (Arrival) (Hafen) (Port)

I, the undersigned, declare that I am a resident of the country of U.S.A.
(Land der Wohnstatt) (Pays de domicile) (Nazione di residenza) (País de residencia)

that I resided in said country from 1894 to present, 1937
(Ich wohnte, dort) (J'y ai demeuré) (Io dimorai là) (Residi allí) (Vough) (Dopo) (Da) (Desde) (Sin) (Desde) (Al) (Hasta)

that I reside at No. Street Highland Place City Yonkers State New York
(Númer) (Nómbr) (Indirizzo) (Dijmans) (Strasse) (Rue) (Strada) (Calle) (Stadt) (Ville) (Ciudad) (Ciudad) (Stadt) (Pueblo) (Estado) (Estado)

that I am a citizen of the country of U.S.A.; that I last sailed from the United States on S. S. Queen Mary on December 15, 1937, from New York
(Staatsangehörigkeit) (Ciudadanía) (Cittadinanza) (Residencia) (Verweise des U. S. Konsuls) (Départ d'origine des E. U.) (Parti d'origine) (Salida de los E. U. A.)
(Fahrer) (Vapour) (Fährer) (Vapour) (Datum) (Date) (Fecha) (Hafen) (Port) (Hafen) (Port)

that I am accompanied by the following-named members of my family and household who are included in this declaration; none
(Names and relationship) (Sin relación) (Noms) (Je suis accompagné par) (Je suis accompagné(e) de) (Vengo acompañado con) (Vengo acompañado con)

that I and those who accompany me are all residents of the same country and our baggage is enumerated below:

BAGGAGE:	NUMBER OF TRUNKS (Koffer) (Mallas) (Bastis) (Bastis)	HAND PACKAGES, VALISES, BAGS, ETC. (Reisegepäck) (Valises) (Valigia) (Mochilas)	BALES, BOXES, BUNDLES (Kisten) (Cajas) (Cajas) (Cajas)	OTHER PACKAGES (Andere Pakete) (Autres colis) (Altri pacchi) (Diversos paquetes)	TOTAL PIECES OF BAGGAGE (Zusammen) (Totale)	LETTER UNDER WHICH BAGGAGE WILL BE PLACED ON FEE
		<u>four</u>			<u>four</u>	<u>B.</u>

TO BE FILLED OUT BY PASSENGER (Gegenstände) (Articles) (Articoli) (Artículos)				FOR CUSTOMS OFFICER'S NOTATIONS ONLY (Für die Bemerkungen der Zollbeamten) (Pour les employés de la douane seulement) (Da riempire solamente dagli ufficiali di dogana) (Solo para las anotaciones de los empleados de aduanas)		
Description of articles				Value	Rate	Duty
1 Set Chessmen				10.00		
2 Trian Photos				7.00		
3 Wooden boxes				3.00		
4 Bales Sandalwood				2.00		
5 Collection of Books (Copy value estimated)				20.00		
TOTAL OF THIS SHEET				42.00		
Carried forward from continuation sheet						
TOTAL DECLARED				42.00		
TOTAL DUTY OR FINE						

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JAN 18 1940

If more space is required, use continuation sheet, Customs Form 6033—Cont., which will be supplied by Purser.

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337

1009

Government's Exhibit 13.

1010

Petition for Naturalization of Nicholas Dozenberg, dated November 1, 1910, and addressed to the United States District Court for the District of Massachusetts. [The signature of Nicholas Dozenberg appears in two places above the words "Complete and true signature of petitioner."]

1011

GOVERNMENT'S EXHIBIT 14.
(Mounted on Opposite Page.)

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GOVERNMENT EXHIBIT 14.

180621

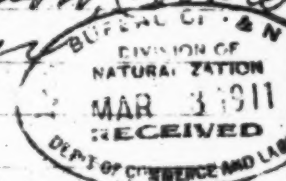
To be forwarded to the Bureau of
Immigration and Naturalization

Position, Volume 20 page 39 Sub. Volume 733 page 21

Description of holder: Age 28 years; height 5 feet 8 inches; color white; complexion light; color of eyes blue; color of hair brown; visible distinguishing marks none

Name, age and place of residence of wife Katherine 23 yrs. Boston, Mass.

Name, age and place of residence of minor children No children



MASSACHUSETTS DISTRICT.

S.S.

Nicholas Degenberg (Signature of holder)

It is remembered, that at a term of the District court of the United States held at Boston on the 6th day of February, in the year of our Lord nineteen hundred and eleven, Nicholas Degenberg, who previously to his naturalization was a subject of Great Britain, appeared residing at number 1309 Tremont street, City of Boston (County of Suffolk, State of Massachusetts) having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in the State of Massachusetts for one year immediately preceding the date of the filing of his petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that he was entitled to be so admitted, it was thereupon ordered by the said court that he be admitted as a citizen of the United States of America.

The testimony whereof the seal of said court is hereunto affixed on the 6th day of February in the year of our Lord nineteen hundred and eleven and of our Independence the one hundred and thirty-fifth.

(Official character of officer)

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Government's Exhibit 15.

List of passports sent by the Department of State, Washington, D. C., to the N. Y. Passport Agency, March 12, 1921. Included in this list is passport #2990 in the name of Nicholas Dozenberg.

GOVERNMENT'S EXHIBIT 16.

(Mounted on Opposite Page.)

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GOVERNMENT EXHIBIT 16.

The Department of State will act upon this application as promptly as possible after receipt. Inquiry concerning it should be made in case of emergency since the time consumed in responding to such an inquiry may retard the issue of a passport to you and would necessarily retard the issue of passports to other persons.

An application for a passport must have attached to it a copy of the applicant's photograph.

A loose signed photograph of the applicant must accompany the application.

The photographs must be on thin paper, should have a light background, and be not over three inches in size.

The legal fee for a passport is nine dollars, in currency, and one dollar for execution of application. The total fee is \$10.00. It is unnecessary to pay any other fee to any person in connection with filing out or execution of this application for obtaining the passport. The clerk of court or Passport Agent before whom this application is executed will give the applicant all necessary information and guidance.

[EDITION OF 1925]

[FORM FOR NATIVE CITIZEN]

UNITED STATES OF AMERICA

STATE OF NEW YORK

COUNTY OF NEW YORK

I, George Morris

(Name in full)

a NATIVE CITIZEN OF THE UNITED STATES, hereby apply

to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Lawrence

(See footnote)

(City or town)

Kansas, on May 20, 1891

(State)

(Date)

(A woman must insert date of last marriage or state never been married)

that my father Wm Morris was born at Urbana Kansas

(A woman who has been married must refer to husband)

(City or town)

(State or country)

and is now residing at Danied 1912

(Give present address. If deceased, give date of death)

The portion in this block need not be filled in by a married woman or a person whose father was born in the United States.

My father emigrated to the United States on or about _____, resided continuously in the United States from 1 _____ to 1 _____, and was naturalized as a citizen of the United States before the _____ Court _____ (District, State, County) at _____ on _____ 1 _____

(City and State) (Month) (Day) (Year)

I have resided outside of the United States at the following places for the following periods:

(Name each country visited and length of stay in each)

None

from _____ to _____

(Departure from U.S.)

(Name of countries visited)

from _____ to _____

and that I am domiciled in the United States, my permanent residence being at 17 Christopher St. in the City of New York, State of New York

my And

my last passport was obtained from none on _____

(Washington or location of office abroad)

(Date)

and was _____ I am about to go abroad temporarily and intend to return to the United States within _____ (months) _____ (years) with the purpose of residing and performing the duties of citizenship therein.

I desire a passport for use in visiting the countries hereinafter named for the following purpose:

Germany, France, EnglandTravel

(Name each country to be visited)

(Object of visit)

I request that my passport be issued to _____ who was born

(Name in full)

at _____ on _____ and to whom I was married

(Place and state or country)

(Date)

on _____ [My wife was naturalized as a citizen of the United States before the _____ (Portion in brackets not to be filled in if wife claims citizenship through birth in the United States)]

(Date of marriage)

Court of _____ at _____

(District, State, county)

(City and State)

on _____ 1 _____ as shown by the accompanying Certificate of Naturalization. Since naturalization she has resided abroad at the following places for the following periods:

(Month)

(Day)

(Year)

NOV 20

4.0055
30
MORRIS
GEORGE
(To be printed by applicant for passport)

Passport No. _____
Seen and signed _____
Issued at _____

I am about to go abroad temporarily and
 intend to return to the United States within 2 years with the purpose of residing and performing the duties of citizenship therein.
 I desire a passport for use in visiting the countries hereinafter named for the following purpose:
Germany, France, England Travel
 (Name each country to be visited) (Object of visits)
 I request that my passport be issued to [redacted] who was born
 at [redacted] on [redacted] and to whom I was married
 on [redacted] (Date of marriage) (My wife was naturalized as a citizen of the United States before the
 (Name of Court) Court of (District, State, county) at (City and State)
 on [redacted] as shown by the accompanying Certificate of Naturalization. (Date)
 she has resided abroad at the following places for the following periods:
 from [redacted] to [redacted] (Departure from U. S.)
 from [redacted] to [redacted] (Return to U. S.)
 I am submitting the following evidence of my citizenship:
 EXHIBIT
 U. S. Dist. Court
 S. D. of N. Y. 1 (10) Born at [redacted]
 born at [redacted] on 43389
 born at [redacted] on [redacted]
 (Name) (Place and state or country) (Date)

No. _____
 Seen and checked _____
 Issued at Washington

NOV 23 1927
 APR 26 1929
 FILED

REC'D NOV 19 1927

A person born in the United States should submit a birth or baptismal certificate with his application, or if the birth was not recorded, affidavits from the attend-
 ing physician, parents, or other persons having sufficient knowledge to be able to testify as to the date and place of the applicant's birth. The same kind of evidence
 should be submitted if American-born wife is included in the application and the marriage occurred on or after September 22, 1922. If wife acquired American citizen-
 ship through naturalization on or after September 22, 1922, evidence of her citizenship of the nature set forth in the Rules Governing the Granting and Issuing of Pass-
 ports in the United States should be submitted.

OATH OF ALLEGIANCE

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.



Sworn before me this NOV 17 1927 day

192

Charles Madison
Agent of the Department of State.

George Morris
(Signature of applicant)

DESCRIPTION OF APPLICANT

Height: 5 feet, 5 inches. Age: 36 years.

Hair: chestnut Eyes: blue

Distinguishing marks or features Scar left chin
(Note any facial marks or scars by which you may be identified)

Place of birth Lawrence, Kansas Date of birth May 20, 1891
(City and State) (Month, day, and year)

Occupation journalist

I intend to leave the United States from the port of New York
(Port of departure)
sailing on board the Dec 15 on Dec 15, 1927
(Name of ship) (Date of departure)

ADDRESS

I request that my passport be mailed to the following address:

Name: George Morris

No. and Street: 40 William 17 Christopher St.

City and State: New York City, N.Y.

[NOTE.—A passport will not be mailed to a hotel address unless the hotel is the applicant's place of permanent residence. For safe and prompt return of passport, have it sent to Passport Agency, New York.]

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below; signature hereto affixed; that I know the applicant who executed the affidavit herein before set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly

swear that I have known the applicant personally for five years.

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

George Edward Powers
(Name of witness)
108 Goodrich St Astoria, O.
(Residence address of witness)

*Sworn to before me this NOV 17 1927 day

Charles Madison, 192
Agent of the Department of State.



swear that the statements made in the application are true to the best of my knowledge and belief; further, I solemnly

swear that I have known the applicant personally for five years.

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

George Edward Powers
(Name of witness)
108 Goodrich St Astoria, O.
(Residence address of witness)

Sworn to before me this 17 day

of Clas. Madison, 192
Agent of the Department of State.



*This certificate is not valid unless countersigned by an Agent of the Department of State or by a clerk of a Federal court or a State court having naturalization jurisdiction.



A signed duplicate of the photograph attached hereto must be sent to the Department with the application to be affixed to the passport with an impression of the Department's seal.

16/2

GOVERNMENT EXHIBIT 16A.

AFFIDAVIT OF BIRTH TO BE SUBMITTED WITH APPLICATION
FOR AMERICAN PASSPORT

NOTE.—A very severe penalty is provided in Sections 3 and 4 of Title 9 of the Espionage Act approved June 3, 1917, for the fabrication of applications for passports, or of affidavits or other documents to be used in connection therewith.

I, the undersigned, do solemnly swear that to the best of my knowledge and belief the following statements are true and correct:

That I have known

George Morris

(Name of person whose birth in the U. S. is to be proved.)

who

whom I know

is an applicant for an American passport; for the past *36* years:

That the person whose name appears above is now

deceased

residing at

17 Christopher St. New York

N. Y.

(Street address and city or town.)

(State.)

and was born in

Lawrence Kansas

(City or town.)

(State.)

on or about

May 20

1891

(Month and date.)

(Year.)

and is my

son

(Name relationship or write "Not related.")

My knowledge and belief of place and date of birth appearing above are based upon the following facts:

(If affiant is not related to person whose birth in the U. S. is to be proved state briefly how and through what sources the knowledge was acquired.)

Personal knowledge

JAN 18 1940

JAN 1 19

Martha Morris

(Signature of affiant.)

Housewife

(Occupation and title of firm.)

1893 Daly Ave. Bronx

(Street address.)

New York City

(City and State.)

Subscribed and sworn to before me this

17th

day of

November

1937

J. L. Perilla

(Agent of the Department of State, Clerk of Court or Notary Public.)

[IMPORTANT—Use Impression seal.]

(OVER)

1-422

Government Printing Office

FD-26 16/A

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,*Plaintiff,*

against

EARL RUSSELL BROWDER,

Defendant. 1040

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above action that the defendant Earl Russell Browder was born at Wichita in the State of Kansas in the United States of America on May 20, 1911, and that he is and has always been a native citizen of the United States of America.

Dated, New York, January 13, 1940.

EARL RUSSELL BROWDER,

Defendant in Person. 1041

BATTLE, LEVY, FOWLER & NEAMAN,
GEO. GORDON BATTLE,

Attorneys for Defendant.

JOHN T. CAHILL,

United States Attorney for the
Southern District of New York.

1042

Government's Exhibit 18.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

EARL RUSSELL BROWDER,

Defendant.

1043

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above named action that the handwriting, hereinafter referred to on a passport application in the name of Earl Russell Browder (a photostatic copy of which application is annexed hereto and marked Exhibit "A"*), on which passport #145182 was issued by the Department of State on September 1, 1934, and the handwriting hereinafter referred to on an application for the renewal of the said passport (a photostatic copy of which renewal application is hereto annexed and marked Exhibit "B"**) which renewal application was made on February 2, 1937, is conceded and admitted by the defendant, EARL RUSSELL BROWDER, to have been written by him.

1044

The handwriting hereinbefore referred to in the said passport application (Exhibit "A") is the following:

ON THE FIRST PAGE:

1. The written words "Earl Russell Browder" appearing between the printed word "I" and the printed words

*Exhibit "A" annexed to this stipulation is Government's Exhibit 2 appearing R. p. 305.

**Exhibit "B" annexed to this stipulation is Government's Exhibit 6 appearing R. p. 331.

Government's Exhibits.

1045

"a NATIVE CITIZEN OF THE UNITED STATES",
and above the printed words "(Name in full)".

2. The written words "Wichita Kansas" appearing between the printed words "I was born at" and the printed word "on" and above the printed words "(City or Town)" and "(State)".

3. The written words and numerals "May 20, 1891" appearing between the printed word "on" and the printed words "that I was" and above the printed word "(Date)".

4. The written words "Wm Browder" appearing between the printed words "that my father" and the printed words "was born at" and above the printed words "(A woman who has been married must insert husband's name)". 1046

5. The written word "Kentucky" appearing between the printed words "was born at" and the printed words "and is now residing" and above the printed words "(City or town) (State or country)".

6. The written words and numerals "1601 No. Morrell, Englewood, Mo." appearing after the printed words "is now residing at" and above the printed words "(Give present address. If deceased, give date of death)". 1047

7. The written words and numerals "2714 Wallace Ave." appearing between the printed words "residence being at" and the printed words "in the city of" and above the printed words "(Street address)".

8. The written words "New York" appearing between the printed words "city of" and the printed words "State of".

9. The written words "New York" appearing between the printed words "State of" and the printed words "I have not taken".

1048

Government's Exhibits.

10. The written word "None" appearing between the printed words "obtained from" and the printed word "on" and above the printed words "(Insert Washington or location of office abroad)".

11. The written word "Six" appearing between the printed words "United States within" and the printed word "months".

ON THE SECOND PAGE:

1049

12. The written words "Earl Russell Browder" appearing after the printed oath of allegiance and above the printed words "(Signature of applicant)".

13. All written matter appearing under the printed heading "DESCRIPTION OF APPLICANT", and between the printed heading "DESCRIPTION OF APPLICANT" and the printed heading and words "ADDRESS". I request that my passport be mailed to the following address:"

The handwriting hereinbefore referred to in the said application for a renewal (Exhibit "B") is the following:

1050

1. The written words "Earl Russell Browder" appearing on the second page after the printed word "(Signature)" and above the printed words "(I hereby declare that I personally affixed my signature appearing above)".

Dated, New York, N. Y., January 6th, 1940.

EARL RUSSELL BROWDER,

Defendant, in Person

BATTLE, LEVY, FOWLER & NEAMAN,
GEO. GORDON BATTLE,

Attorneys for Defendant

JOHN T. CAHILL,

United States Attorney for the
Southern District of New York

Government's Exhibit 19.

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Mailing list of the Department of State, Washington, D. C., headed "Passport Division 11/21/27" indicating the mailing on that date by registered mail of passport #702412 to George Morris, c/o Williams, 17 Christopher Street, N. Y. C.

Government's Exhibit 20.**NEW YORK AGENCY 11/19/31**

1052

451933 Richards, Albert Henry

Government's Exhibit 21.

Passport Regulations—Rules Governing the Granting and Issuing of Passports in the United States, revised to March 31, 1938.

1053

Government's Exhibit 22.

Passport Regulations, Executive Order January 31, 1938—Rules Governing the Granting and Issuing of Passports in the United States—regulations concerning passports and applications therefor issued by the Secretary of State in pursuance of Executive Order of January 31, 1928.

1054

Government's Exhibit 23.

THE DEPARTMENT OF STATE

PASSPORT SERIES, No. 3

PASSPORT REGULATIONS

RULES GOVERNING THE GRANTING
AND ISSUING OF PASSPORTS
IN THE UNITED STATES

1055

EXECUTIVE ORDER NO. 5860 OF JUNE 22, 1932

DEPARTMENTAL ORDER NO. 538 OF JUNE 22, 1932

(Emblem)

United States
Government Printing Office
Washington: 1932

PUBLICATION No. 366

EXECUTIVE ORDER NO. 5860

1056

RULES GOVERNING THE GRANTING AND
ISSUING OF PASSPORTS IN THE UNITED
STATES

Section 1 of the act of July 3, 1926 (U. S. Code, title 22, sec. 211a), provides that "The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the

United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports." The following rules are accordingly prescribed for the granting and issuing of passports in the United States.

SECTION I.—AUTHORITY TO ISSUE PASSPORTS IN THE
UNITED STATES AND ABROAD

1. Section 1 of the act of July 3, 1926 (U. S. Code, title 22, sec. 211a), and section 4078 of the Revised Statutes as amended by the act of June 14, 1902 (U. S. Code, title 22, sec. 219), provide that no one but the Secretary of State may grant and issue passports in the United States, and he is empowered to refuse them in his discretion.

1058

2. Passports are issued by American consular officers abroad. A citizen who is abroad and desires to procure a passport should apply therefor to the nearest American consular officer.

3. Passports are issued in the Virgin Islands, Hawaii, the Philippines, Guam, American Samoa, and Puerto Rico by the chief executives of those islands. Applications for passports by persons residing therein should be made to such chief executives.

1059

SECTION II.—TO WHOM PASSPORTS ARE ISSUED

4. Section 4076 of the Revised Statutes of the United States as amended by the act of June 14, 1902 (U. S. Code, title 22, sec. 212), provides that "No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States."

1060

Government's Exhibits.

5. Unless a request is made by the parental or other guardian that a passport be denied, passports may be issued to minors upon their own application.

6. Children may execute applications on their own behalf when of sufficient intelligence to understand the statements therein and the nature of the oath of allegiance.

7. As a rule children of 12 years of age or more should be required to execute their own applications.

1061

8. If circumstances warrant, a parent or guardian may execute applications on behalf of minors of any age. The application should be signed thus: "Richard Roe, by John Roe, father." The oath of allegiance need not be administered.

SECTION III.—PERSONS WHO MAY BE INCLUDED
IN ONE PASSPORT

1062

9. Only persons who are citizens or who owe allegiance to the United States may be included in a passport of the United States.

10. A passport issued to a husband or father may include his wife and unmarried minor children. A woman's passport may include her unmarried minor children.

11. A minor brother or sister may be included in the passport of an elder brother or sister.

12. A minor grandchild, niece, or nephew of tender years may be included in the passport of the relative when the application therefor is accompanied by a request from the parental or other guardian.

Government's Exhibits.

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13. Members of the immediate family who are 21 years of age, maidservants, and manservants must bear separate passports.

14. Adopted children, who are American citizens, may be included in a passport issued to the adoptive parents. (See rule 74.)

SECTION IV.—FEE FOR THE EXECUTION OF AN APPLICATION AND FOR A PASSPORT; PASSPORTS ISSUED WITHOUT FEES

15. Section 1 of the act of June 4, 1920 (U. S. Code, title 22, sec. 214), provides in part as follows: 1064

"From and after the 1st of July, 1920, there shall be collected and paid into the Treasury of the United States quarterly a fee of \$1 for executing each application for a passport: . . . *Provided*, That nothing herein contained shall be construed to limit the right of the Secretary of State by regulation to authorize the retention by State officials of the fee of \$.1 for executing an application for a passport: *And provided further*, That no fee shall be collected for passports issued to officers or employees of the United States proceeding abroad in the discharge of their official duties, or to members of their immediate families, or to seamen, or to widows, children, parents, brothers, and sisters of American soldiers, sailors, or marines buried abroad whose journey is undertaken for the purpose and with the intent of visiting the graves of such soldiers, sailors, or marines, which facts shall be made a part of the application for the passport."

1065

16. Section 2 of the act of May 16, 1932, provides:

"That the validity of a passport . . . shall be limited to a period of two years: *Provided*, That a passport

1066

Government's Exhibits.

may be renewed under regulations prescribed by the Secretary of State for a period, not to exceed two years, upon payment of a fee of \$5 for such renewal but the final date of expiration shall not be more than four years from the original date of issue: *Provided further*, That the Secretary of State may limit the validity of a passport, . . . or the period of renewal of a passport to less than two years: *Provided further* That the charge for the issue of an original passport shall be \$9."

1067

17. Under the provisions of the act of June 4, 1920, a fee of \$1 must be collected for the execution of each application for a passport. There is no exception to this rule.

SECTION V.—APPLICATIONS FOR PASSPORTS.

1068

21. The act of June 15, 1917 (U. S. Code, title 22, sec. 213), requires every applicant for a passport issued under the authority of the United States to submit a written application, duly verified by his oath, and containing a true recital of each and every matter of fact which may be required by law or by rules authorized by law as a prerequisite to the issuance of a passport.

22. The application must be made in person and signed by the person to whom the passport is to be issued. [See rule 38.]

23. The application must be executed before a clerk of a Federal court or a State court authorized by the act of Congress of June 29, 1906 (34 Stat. 596), to naturalize aliens, or before an agent of the Department of State.

24. The seal of the court, when the application is executed before a clerk of court, or the seal of an agency of the Department of State when the application is executed before such agent, must be affixed to the application.

25. Where the application is not made at or near the place where the applicant resides, the applicant should give the name and address of a reputable person, residing at or near the place of the applicant's residence, to whom the clerk of court, the agent of the Department of State, or the Department of State itself may address such inquiry as may be necessary concerning the applicant. Where it is necessary to make inquiries by telegraph, the applicant should bear the expense thereof.

1070

SECTION VI.—CONTENTS OF APPLICATION FOR A PASSPORT

a. *General.* Each application for a passport must contain the following:

26. The applicant's name.

27. The names, places, and dates of birth of other persons to be included in the passport. (See Section III.)

1071

28. Date of the marriage, if the wife is to be included in the husband's passport or is applying for a passport in her own name.

29. The place and date of the applicant's birth.

30. The name of the applicant's father, the country of his birth, and his present place of residence. If the applicant is a married woman or has ever been married, in lieu of information concerning the country of birth and present place of residence of her father, information con-

1072

Government's Exhibits.

cerning the country of birth and present place of residence of her husband or former husband, if the marriage has been terminated, must be stated in the application, unless the citizenship of the woman is dependent upon the father in which case information concerning both the father and husband or former husband must be stated in the application. [See sec. XI.]

1073 31. When and for what period of time the applicant has resided outside of the United States, provided he is naturalized citizen.

32. The applicant's place of permanent residence, if any, in the United States and the occupation followed by him at that place.

33. The number, date, place of issue, and the disposition made of any previous passport issued to the applicant. [See rule 14.]

34. The period within which the applicant intends to return to the United States for permanent residence.

1074 35. The applicant's intended port and date of departure, and the name of the vessel if known at the time of making application for passport.

36. The applicant's oath or affirmation of allegiance to the United States.

37. Whether the applicant since acquiring American citizenship has taken an oath of allegiance to, or been naturalized in, a foreign state.

38. The applicant's name should appear in full on the front page of the application, thus, "John Henry Smith,"

Government's Exhibits.

1075

not "J. H. Smith"; a married woman's name should appear on the front of her application in the family name of her husband, thus, "Mary Elizabeth Doe," not "Mrs. John Doe." If the applicant is a married woman who desires the use of her maiden or professional name, she may, in applying for a passport, use her maiden or professional name followed by the name of her husband—thus, "Mary Doe (wife of John Henry Jones)"—provided she submits satisfactory proof that she customarily uses her maiden or professional name and is regularly known thereunder in the community where she lives. The application should be signed by the applicant in his or her usual signature. If the applicant signs by mark, two attesting witnesses to the signature are required.

1076

39. Description of the applicant. Whenever possible some distinguishing mark or feature should be noted in the space provided therefor.

f. Object of the applicant's journey abroad.

40. The applicant for a passport must state in his application the names of the countries he expects to visit and the object of the visit to each.

1077

41. The Secretary of State may within his discretion require an applicant for a passport, or for the amendment or extension of a passport, to submit satisfactory evidence of the object of his journey abroad.

c. Photographs of the applicant and persons accompanying the applicant.

42. The application must contain a recently taken photograph of all persons who are included in the application. A group photograph is preferable.

1078

Government's Exhibits.

43. Photographs should have a light background and must be on *thin* paper not more than 3 by 3 inches and not less than 2½ by 2½ inches in size.

44. The photograph of the person or persons included in the application must be attached to the back of the application under the seal of the officer before whom the application is executed.

1079

45. A duplicate copy of the photograph attached to the application must accompany the application for use in the passport for which application is made.

46. Passport photographs must be signed by the applicant, the signature to correspond with the signature in the application.

47. Photographs in uniform will not be accepted except from applicants who are in the active service of the military forces of the United States.

d. Affidavit of a supporting witness.

1080

48. The applicant must be accompanied by at least one credible witness, an American citizen, who has known the applicant for a period of two or more years.

49. The application should contain the supporting affidavit of such a witness, who must state the period of time during which he has known the applicant; that the applicant is the person whom he represents himself to be, and that his statements are true to the best of his knowledge and belief.

50. Such supporting affidavit, together with any additional affidavit or affidavits which may be required, shall

Government's Exhibits.

1081

become part of the application, so that the following provisions of law shall be applicable: United States Code, title 22, sec. 220, concerning the making of false statements in applications and the penalty prescribed thereunder; United States Code, title 18, sec. 231, concerning perjury and the penalty prescribed thereunder; and United States Code, title 18, sec. 88, concerning conspiracies to commit an offense against or to defraud the United States and the penalty prescribed thereunder.

51. The applicant or the witness should reside within the jurisdiction of the officer before whom the application is executed. 1082

52. If the applicant or the witness is not known to the clerk of court or passport agent and can not present conclusive documentary evidence of identity, the applicant must be accompanied by an American citizen established in a recognized profession or business and having his office or place of business within the jurisdiction of the court or the passport agency (e. g., a clergyman, lawyer, physician, banker, broker, real estate dealer, or merchant). Clerks of courts and passport agents should satisfy themselves of the identity and *bona fides* of the applicants and their witnesses. 1083

53. No lawyer or other person who expects to receive a fee in connection with the application or passport will be accepted as a witness.

54. A passport issued by the Secretary of State to which is affixed the photograph and signature of the person to whom the passport was originally issued will be accepted in lieu of an identifying witness.

1084

*Government's Exhibits.***SECTION VII.—APPLICATIONS OF OFFICERS OR EMPLOYEES OF THE UNITED STATES AND OF THEIR IMMEDIATE FAMILIES**

61. Officers or employees of the United States proceeding abroad under orders must submit with their applications a written request from the head of the department or office in which the applicant is employed for the issue of a passport to the applicant. The request should set forth the nature of the employment of the applicant and the official nature of his journey abroad.

1085

62. Applicants for passports who are the members of the immediate family of an officer or employee of the United States who is about to proceed abroad or who is abroad in the discharge of official duties are not required to submit documentary evidence of their status if they refer to a passport issued to such an officer or employee of the United States.

SECTION VIII.—APPLICATIONS OF AMERICAN SEAMEN

1086

63. As a rule American seamen traveling as such should use in lieu of passports the seaman's certificate of citizenship issued by customs officials. Nevertheless, passports are issued to seamen who are citizens or who owe allegiance to the United States whenever passports are required upon the travel in which the seamen are engaged.

64. A seaman should transmit with his application the seaman's certificate of American citizenship or other official document of nationality or identity of which he is the bearer together with such additional evidence of American citizenship called for by Section X.

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Government's Exhibits.

1087

**SECTION X.—EVIDENCE OF CITIZENSHIP TO ACCOMPANY
APPLICATIONS FOR PASSPORTS***a. Native citizen.*

66. A person born in the United States in a place where official records of birth were kept at the time of his birth must submit with the application a birth certificate under the seal of the official custodian of birth records. A certificate to be acceptable must show the place and date of birth and that the record thereof was made at the time of birth or shortly thereafter. If a birth certificate is not obtainable, that fact should be shown, and the application should be supported by a baptismal certificate or a certified copy of the record of baptism under the seal of the church in which the applicant was baptized, giving the place and date of birth, the date of baptism; and the date on which the record of baptism was made. A baptismal certificate to be acceptable must show that the baptism occurred within a short time after the birth of the applicant. If birth and baptismal certificates are not obtainable, an affidavit of the parent or of the physician, nurse, or midwife who attended the birth or the affidavit of a reputable person having sufficient knowledge to be able to testify as to the place and date of the applicant's birth may be accepted. A person who did not attend the birth but who testifies concerning the place and date of the applicant's birth should state briefly how and through what source the knowledge was acquired.

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68. If the applicant comes within the provisions of rules 66 or 67, reference to an application submitted since November 1, 1916, will be sufficient, provided there is a record on the previous application of the necessary evidence of citizenship having been submitted.

1090

*Government's Exhibits.**b. Persons claiming citizenship through naturalization of self or parent.*

69. A person claiming citizenship through naturalization, against whom the presumption of having ceased to be an American citizen has arisen under the provisions of section 2 of the act of March 2, 1907 (34 Stat. 1228), must submit with his application a supplementary affidavit setting forth the exact places and periods of foreign residence and the reasons therefor.

1091

70. A person naturalized in his own right must transmit with his application his certificate of naturalization.

71. The child of a naturalized citizen claiming citizenship through the naturalization of the parent must state in the application the exact date of immigration to the United States and submit the parent's certificate of naturalization.

72. A child born abroad after the naturalization of the parent must submit with his application evidence of the nature described in the preceding rule.

1092

73. If the applicant comes within the provisions of rules 70, 71, or 72, his old passport will be accepted in lieu of a certificate of naturalization, provided the application upon which a previous passport was issued is found to contain sufficient information as to the naturalization of the applicant or the parent.

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d. Wife included in husband's application.

75. When a wife is to be included in the husband's passport, in addition to evidence of his own citizenship

Government's Exhibits.

1093

his application must be accompanied by evidence of his wife's citizenship if they were married on or after September 22, 1922.

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SECTION XIII.—THE USE OF TITLES AND BUSINESS OR PROFESSIONAL NAMES IN PASSPORTS

87. Professional and other titles will not be inserted in passports, but an applicant's name in religion, an author's *nom de plume*, a stage or business name, etc., may be included in parentheses after the bearer's name. 1094

88. Persons who have had their names changed by decree or order of a court may be issued passports in the changed name upon submission of a certified copy of the decree or order of the court.

89. If the name is changed by the applicant himself having adopted a new name, affidavits must be submitted from two or more persons to the effect that the applicant uses the new name, has used it for a stated period of time, is known by such name in the community in which he resides, and carries on his business or profession in that name. 1095

SECTION XIV.—PERIOD OF VALIDITY OF PASSPORTS AND EXTENSION OF LIMITED PASSPORTS

90. Section 2 of the act of May 16, 1932, provides in part as follows:

“That the validity of a passport . . . shall be limited to a period of two years: *Provided*, That a passport may be renewed under regulations prescribed by the Secretary of State for a period, not to exceed two years, upon payment of a fee of \$5 for such renewal,

1096

Government's Exhibits.

but the final date of expiration shall not be more than four years from the original date of issue: *Provided further*, That the Secretary of State may limit the validity of a passport, . . . or the period of renewal of a passport to less than two years: *Provided further*, That the charge for the issue of an original passport shall be \$9."

1097

91. The original period of possible validity of a passport issued under the act of May 16, 1932, is restricted to two years, but the passport may be renewed for a period of not more than two years upon payment of a fee of \$5.

92. The Department of State is authorized in its discretion to restrict the original or renewal period of a passport to less than two years.

1098

93. A passport which was issued within the period of four years prior to application for renewal may be renewed in the discretion of the Department of State; but in any case where a person fails to apply for renewal of his passport prior to or immediately after the expiration of the original period of validity of two years his passport, when renewed, shall not extend beyond a period of four years from the original date of issue.

94. The fee for the renewal of a passport is \$5.

95. Requests for renewal of a passport should not be made until the passport has expired or is about to expire.

96. As a rule, passports having a remaining validity of more than three or four months should not be renewed unless special circumstances should warrant exceptional procedure.

Government's Exhibits.

1099

97. Requests for renewal may be made by personal application or letter addressed to the Department of State, a passport agent, a consular officer of the United States, or the chief executive of Hawaii, the Philippines, Puerto Rico, the Virgin Islands, Guam, or American Samoa.

98. The fee of \$5, in currency or postal money order, should accompany each request for renewal. Postal money orders should be made payable to the Disbursing Officer, Department of State.

99. Drafts or checks will not be accepted.

1100

100. Each request for renewal should be accompanied by the passport which it is desired to be renewed.

101. A person who holds an expired passport and desires a new passport must submit a new application therefor.

102. A person in the United States who has been issued a passport restricted in validity to a period less than two years and who desires to apply for an extension of the validity of the passport to the full period of two years should communicate with the Department of State, unless he resides in a place where there is an agent of the Department of State, in which case the application for extension may be forwarded through such agent.

1101

103. A person outside the United States holding a passport which has been restricted in validity may apply through a diplomatic or consular officer of the United States or through the chief executive of one of the insular possessions of the United States to have his passport extended.

104. No fee is required for the extension of a passport.

1102

Government's Exhibits.

SECTION XV.—AMENDMENT OF PASSPORTS

105. Passports may be amended in the United States by the Department of State or any of the passport agents of the Department of State.

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109. A passport may be amended upon the written request of the bearer to indicate the object of a particular journey.

1103

110. Passports may be amended to include those persons only who are citizens of or who owe allegiance to the United States.

111. An application for the amendment of a passport to include any person or persons should be in writing and accompanied by two satisfactory photographs (see rule 43) and evidence of citizenship, as required by these rules.

112. A passport may be amended to include the husband, wife, or minor children.

1104

113. A passport of a brother or sister may be amended to include younger brothers and sisters.

114. A passport may be amended, with the written consent of parent or guardian, to include a grandchild, niece, or nephew of tender years.

115. A passport will not be amended to include a person who bears a valid passport or who is included in a valid passport unless such passport is submitted for cancellation or for amendment to exclude the applicant for a new or separate passport.

Government's Exhibits.

1105

116. A passport may be amended upon the written request of the bearer to exclude a person or persons originally included in the passport.

SECTION XVI.—ADDITIONAL REGULATIONS

117. The Secretary of State is authorized to make regulations on the subject of granting and issuing of passports additional to these rules and not inconsistent with them.

HERBERT HOOVER

1106

THE WHITE HOUSE,

June 22, 1932.

DEPARTMENTAL ORDER NO. 538

ORDER BY THE SECRETARY OF STATE REGARDING PASSPORTS AND APPLICATIONS FOR PASSPORTS

SECTION I.—PREVIOUS RULES AND REGULATIONS

1107

1. All previous departmental rules and regulations relating to the subject of this order are hereby revoked.

SECTION II.—PASSPORT AGENTS OF THE DEPARTMENT OF STATE

2. Agents of the Department of State authorized to take applications for passports and to perform passport services are stationed at New York, Boston, Chicago, New Orleans, San Francisco, Seattle,¹³ and in the Department of State at Washington.

¹³Discontinued Aug. 15, 1932.

1108

Government's Exhibits.

SECTION III.—BLANK FORMS OF APPLICATIONS FOR PASSPORTS

3. Blank forms of applications for use in applying for passports will be furnished, on request, without charge, by the Department of State to persons who wish to apply for passports.

1109

4. Clerks of courts authorized to take passport applications, passport agents of the Department of State, and American consular officers should be supplied with the necessary blank forms of application for passports.

SECTION IV.—TRANSMISSION OF APPLICATIONS AND PASSPORTS

5. Applications when properly executed must be sent by registered mail directly to the Passport Division, Department of State, Washington, D.C., by the clerks of courts or passport agents before whom they are executed.

1110

6. An applicant who so requests may have his application transmitted to this department *at his own risk* by special delivery or air mail. For this purpose he must furnish the clerk of the court or agent taking the application with a special-delivery stamp or sufficient air-mail stamps.

7. If there are good reasons for immediate action upon any application, a brief statement to that effect by the officer before whom the application is executed may be attached to the *face* of the application.

8. As a rule a passport will be forwarded to the applicant by registered mail, directed to the address given in the application, except that a passport will not be forwarded to a hotel unless the hotel is the applicant's place of permanent residence.

9. On the request of the applicant, a passport, if issued, or a passport which has been submitted for amendment or extension, will be forwarded by special-delivery or air mail at the applicant's risk, provided there is attached to the application sufficient special-delivery or air-mail stamps. If the applicant desires the passport forwarded by air mail a registry stamp should also be forwarded. If stamps are not enclosed when it is desired that the passport be forwarded by air mail or special delivery, a separate money order should be enclosed covering postage. The cost of postage should not be included in money order covering the passport or renewal fee. 1112

SECTION V.—SURRENDER OF OLD PASSPORTS

10. An applicant for a new passport who holds an expired or an unexpired passport issued on or after January 3, 1918, should submit the old passport to the official before whom he executes his application for a new passport.

11. Old passports, submitted to clerks of courts by native citizens, may be canceled by cutting out with scissors a part of both covers and of all the pages of the passport. 1113

12. A notation of the cancellation, giving the date, number, and place of issue of the canceled passport, should be made on the margin of the new application.

13. An old passport held by a person who claims citizenship through naturalization should be attached to the application for a new passport and forwarded to the department for cancellation.

14. If the applicant for a new passport is unable to present for cancellation or surrender a previous passport, issued since January 2, 1918, which has expired, he should

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Government's Exhibits.

state in his application the disposition of the passport. If the previous passport is still valid, the applicant should submit a *separate statement, under oath, setting forth in circumstantial detail the disposition of the passport.*

SECTION VI.—CLERKS OF COURTS AUTHORIZED TO RETAIN
\$1 FEE FOR THE EXECUTION OF PASSPORT APPLICATIONS

15. Section 1 of the act of June 4, 1920, reads in part as follows:

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... *Provided*, That nothing herein contained shall be construed to limit the right of the Secretary of State by regulation to authorize the retention by State officials of the fee of \$1 for executing an application for a passport. . . .

1116

16. Clerks of courts other than Federal courts, who are authorized to take applications for passport, . . . are hereby authorized to retain a fee of \$1 for executing each application for a passport. They may not charge or retain more than that amount for executing an application for a passport. This regulation does not in any manner restrict the right of any State to make laws or regulations concerning the disposition of fees retained by clerks of State courts for executing applications for passports.

SECTION VII.—RETURN OF PASSPORT FEES

17. Section 4 of the act of June 4, 1920, reads as follows:

Whenever the appropriate officer within the United States of any foreign country refuses to visa a passport issued by the United States, the Department of State is hereby authorized upon request in writing and the return of the unused passport within six

Government's Exhibits.

1117

months from the date of issue to refund to the person to whom the passport was issued the fees which have been paid to Federal officials, and the money for that purpose is hereby appropriated and directed to be paid upon the order of the Secretary of State. [U. S. C., title 22, sec. 216.]

18. A person who desires to have the fee which he paid to the Department of State for a passport returned to him because of his inability to secure the necessary visa must return his passport to the Department of State within six months from the date of issue of the passport and submit therewith a signed request for refund. The request must contain a circumstantial statement that he has applied for a visa and that the visa has been refused, and should state the reasons, if any, assigned for the refusal of the visa. If such person has received a statement in writing from a foreign official refusing to visa his passport, the statement should be submitted to this department as evidence of the refusal of the visa.

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SECTION VIII.—INQUIRIES CONCERNING APPLICATIONS
SUBMITTED

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19. All inquiries concerning passport applications which have been submitted to the Department of State should be made directly to the department by the applicant. The Department of State will act upon applications as promptly as possible after their receipt. Inquiry concerning applications should be made only in cases of emergency, since the time consumed in responding to such inquiries necessarily retards the examination of applications.

20. Applications should be submitted sufficiently far in advance of the date upon which the passport is required to permit the department to communicate, when necessary,

1120

Government's Exhibits.

with the applicant or other persons concerning the citizenship of the applicant or with respect to any defects which may appear in the application.

21. Communications should be addressed to the Department of State, Passport Division, Washington, D. C. Each communication should give the post-office address of the person to whom the answer is to be directed.

HENRY L. STIMSON

1121

DEPARTMENT OF STATE,

*June 22, 1932.***Government's Exhibit 24.**

Executive Order 6650 of March 23, 1934—Amendment of Executive Order 5860 of June 22, 1932 [prescribing rules governing the granting and issuing of passports in the United States], with reference to passport fees and renewal fees and cancelling rule 99.

1122

Government's Exhibit 25.

Identical with Government's Exhibit 23, appearing herein at pp. 352-374.

Government's Exhibit 26.

Photographic enlargement of front page of Government's Exhibit 2.

Government's Exhibit 27.

1123

Photographic enlargement of reverse side of Government's Exhibit 2.

Government's Exhibit 28.

Photographic enlargement of first page of Government's Exhibit 14.

1124

Government's Exhibit 29.

Photographic enlargement of reverse side of Government's Exhibit 14.

Government's Exhibit 30.

Photographic enlargement of first page of Government's Exhibit 11.

1125

Government's Exhibit 31.

Photographic enlargement of first page of Government's Exhibit 12.

Government's Exhibit 32.

Photographic enlargement of the word "None" on Government's Exhibits 3, 3a, 4 and 16.

1126

Government's Exhibit 33.

Photographic enlargement of reverse side of Government's Exhibit 3.

Government's Exhibit 34.

Photographic enlargement of first page of Government's Exhibit 3.

1127

Government's Exhibit 35.

Photographic enlargement of first page of Government's Exhibit 16.

Government's Exhibit 36.

Photographic enlargement of first page of Government's Exhibit 4.

Government's Exhibit 37.

1128

Photographic enlargement of reverse side of Government's Exhibit 4.

Government's Exhibit 38.

Photographic enlargement of reverse side of Government's Exhibit 3a.

Government's Exhibit 39.

Photographic enlargement of reverse side of Government's Exhibit 16.

Government's Exhibit 40.

1129

Photographic enlargement of first page of Government's Exhibit 3a.

Government's Exhibit 41.

Photographic enlargement of 2 signatures of Nicholas Dozenberg appearing on Government's Exhibit 13.

Stipulation as to Exhibits.

1130

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties that the attorneys for either side may use upon the argument, refer to, or hand up to the Judges of the Circuit Court of Appeals for the Second Circuit for their inspection; any original exhibit introduced in evidence upon the trial of this case; and

IT IS FURTHER STIPULATED AND AGREED, that not less than three days prior to the argument the attorney so proposing to use, refer to, or hand up such original exhibit, shall give notice in writing of such intention to the opposing attorney. 1131

Dated, New York, February 29, 1940.

JOHN T. CAHILL,
United States Attorney,
Attorney for Plaintiff-Appellee.

EDWARD KUNTZ,
Attorney for Defendant-Appellant.

1132

Judgment.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York, on January 22, 1940.

Present—The Honorable ALFRED C. COXE, Judge.

THE UNITED STATES OF AMERICA

vs.

EARL RUSSELL BROWDER, alias
"Nicholas Dozenberg", alias
"George Morris", alias "Al-
bert Henry Richards".

C. 106/210.

U. S. Criminal Code,
Section 220,
Title 22, U. S. C.

Unlawful use of
passport obtained by
false statement.

1133

On motion of the United States Attorney, ordered sentence.

It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary.

1134

For and during the term and period of

Count 1—Two years and fined \$1,000.

Count 2—Two years and fined \$1,000.

Prison sentence on counts 1 and 2 to run consecutively. Prison sentence on count 2 to begin after sentence on count 1.

Bail continued in the sum of \$7,500 pending appeal and to stand committed until such fine and costs shall be paid or until he shall be otherwise discharged by due course of law.

ALFRED C. COXE,
United States District Judge.

Notice of Appeal.

1135

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

EARL RUSSELL BROWDER,

Defendant. 1136

Name and address of Appellant: Earl Russell Browder,
7 Highland Place, City of Yonkers, State of New York.Name and address of Appellant's attorney: Edward
Kuntz, Esq., 100 Fifth Avenue, New York City.Offense: Violation of Section 220 of Title 22, United
States Code.

Date of Judgment: January 22, 1940.

Brief Description of Judgment or Sentence: Two years
and One Thousand Dollars on each count to run consecu-
tively.Name of prison where now confined, if not on bail: De-
fendant admitted to bail in sum of \$7,500 pending appeal.I, the above named appellant, hereby appeal to the
United States Circuit Court of Appeals for the Second
Circuit from the judgment above-mentioned on the grounds
set forth below:Pursuant to Rule V, I hereby serve notice that I do not
elect to enter upon the service of sentence pending appeal.

Dated, New York, January 23, 1940.

EARL RUSSELL BROWDER,
Appellant.

1138

Grounds of Appeal:

1. That the Court erred in denying the application to strike from the indictment references to crimes alleged to have occurred in 1921 and 1927, to the prejudice of the defendant.

1139

2. That the Court erred in refusing to dismiss the indictment upon the application of the defendant on the opening of the trial on the grounds that the indictment was insufficient in law and failed to set forth a crime; that upon its face it appeared that there was no use of a passport under the statute on which the indictment was based; that there was no false statement in the application made by the defendant upon which the indictment was based; that the alleged statement was not material and that the passport issued to him was not issued by reason of the said alleged statement; that the passport was not issued to the defendant by reason of the application containing the said alleged false statement but upon another renewal application which contained no false statement; that the offense alleged in the indictment was outlawed by the statute of limitations; and for all the other reasons cited in the motion to dismiss at the opening of the trial.

1140

3. That the defendant was deprived of his constitutional guarantees under the Fifth Amendment of the Constitution in that the indictment failed to allege the offense clearly and precisely so as to apprise the defendant as to the nature of the charge against him.

4. That the construction of the statute herein by the Court whereby it was held that the presentation of a passport by a native-born citizen of the United States to an immigration inspector at the Port of Entry into the United States was a use within the scope and meaning of the statute, was unconstitutional and deprived the defendant of his privileges and immunities as a citizen of the United

Grounds of Appeal.

1141

States in violation of the Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

5. That the Court erred in overruling the defendant's objections to admission of evidence on the part of the prosecution throughout the trial.

6. That the Court erred in sustaining objections of the prosecution to questions asked by the defendant.

7. That the Court erred at the close of the Government's case and again at the close of the entire case in denying the defendant's motions to dismiss the indictment and to discharge the defendant upon all the grounds contained in the record.

1142

8. That the Court erred in denying the defendant's requests to charge as submitted to the Court.

9. That the Court erred in its charge to the jury.

10. That the Court erred in denying the defendant's motion in arrest of judgment and to set aside the verdict of the jury as against the law, against the evidence and against the weight of the evidence and upon all other grounds contained in the record.

1143

11. That the sentence of the Court was excessive and illegal.

12. That the foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of the assignment of errors to be hereinafter duly filed.

1144

Assignments of Error.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

EARL RUSSELL BROWDER,

1145

Defendant.

Now comes defendant, by his attorney, and files the following assignments of error upon which he will rely upon his prosecution of an appeal from the judgment of conviction of this Court made herein on the 22nd day of January, 1940.

1146

FIRST.—The Court erred in denying the motion made on behalf of defendant for a ruling by the Court that the averments in the indictment in respect to Dozenberg and Morris were surplusage (S. M. 3-13).

SECOND.—The Court erred in denying the motion made on behalf of defendant for a ruling by the Court that the averments in the indictment in respect to Dozenberg and Morris were improper upon the ground that they relate to and in effect charge other crimes outlawed by the Statute of Limitations (S. M. 13-14).

THIRD.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment on the ground that the use to which defendant was charged in the indictment with putting his passport is not a use within

Assignments of Error.

1147

the terms of or contempt, and or prohibited by Section 2 of Title 9 of the Act of June 15, 1917 [Section 220 of Title 22 of the U. S. Code] (S. M. 68-86).

FOURTH.—The Court erred in denying the motion to dismiss the indictment made on behalf of defendant on the ground that the indictment does not charge defendant with making any false statement within the meaning of the said statute (S. M. 2-6, 86-87).

FIFTH.—The Court erred in not holding that the alleged false statement set forth in the indictment was so vague, uncertain and meaningless that no charge of falsity could be predicated upon it (S. M. 86-88).

1148

SIXTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment upon the ground that it appeared upon the face of the indictment that the offense was barred by the Statute of Limitations (S. M. 88-89).

SEVENTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment on the ground that the indictment does not sufficiently set forth any false statement and was so vague and indefinite as not to constitute due process of law under the Fifth Amendment to the Constitution of the United States (S. M. 90).

1149

EIGHTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment on the ground that if the statute (Section 2 of Title 9 of the Act of June 15, 1917, Section 220 of Title 22 of the U. S. Code) is read and interpreted so as to authorize the President and the Secretary of State to prescribe a rule requiring an applicant for a passport to disclose that he had previously obtained a passport illegally and the failure to

1150

Assignments of Error.

make such a disclosure is construed as a false statement within the terms of the said statute and rule, then both the said statute and rule are unconstitutional, and in contravention of the Fifth Amendment to the Constitution of the United States (S. M. 90).

1151

NINTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment on the ground that the application for the renewal of the passport was in effect an application for a new passport and that such renewal application contained no false statement, and an entry by the aid of the renewal so secured was not and could not have been in violation of the said statute (S. M. 91-92).

TENTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment upon the ground that the portion of the said statute with the violation of which the defendant is charged in the indictment, relates solely to aliens and has not and cannot have any application to citizens of the United States (S. M. 92-95).

1152

ELEVENTH.—The Court erred in denying the motion made on behalf of defendant to dismiss the indictment upon the ground that the statement made by defendant if false, was not and could not have been such a statement, that by reason thereof a passport was issued to defendant (S. M. 95-97).

TWELFTH.—The Court erred in denying the motion made on behalf of defendant to exclude all reference to or evidence concerning the Dozenberg and Morris passport applications as immaterial and highly prejudicial to defendant (S. M. 104).

Assignments of Error.

1153

THIRTEENTH.—The Court erred in overruling the objection made on behalf of defendant to the testimony concerning the passport issued in the name of Nicholas Dozenberg on the ground that it was incompetent, irrelevant and immaterial and not within the issues of the case, and highly prejudicial to defendant (S. M. 222-3, 224-5, 227-8, 236, 237, 239, 259-60, 261, 290, 310-11), and also in denying defendant's motion to strike such evidence from the record (S. M. 343, 348-9).

FOURTEENTH.—The Court erred in overruling the objection made on behalf of defendant to the testimony concerning the passport issued in the name of George Morris on the ground that it was incompetent, irrelevant and immaterial and not within the issues of the case, and highly prejudicial to defendant (S. M. 245-6, 247, 259-60, 261, 263, 266-9, 310-11), and also in denying defendant's motion to strike such evidence from the record (S. M. 343, 348, 349-59).

1154

FIFTEENTH.—The Court erred in denying the motion made on behalf of defendant to strike from the record all or specified portions of Government's Exhibits 21, 22, 23, 24 and 25, containing rules and regulations promulgated by the President and the Secretary of State upon the ground that the Secretary of State had no authority to make such rules and regulations (S. M. 340-2).

1155

SIXTEENTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant upon the ground that the use of the passport established by the evidence was not such a use as is contemplated by Section 2 of Title 9 of the Act of June 15, 1917 [Section 220 of Title 22 of the U. S. Code] (S. M. 343).

1156

Assignments of Error.

SEVENTEENTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant upon the ground that the Government failed to prove defendant's use of his passport to enter the United States in 1937 and 1938 (S. M. 343-5).

EIGHTEENTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant upon the ground that the Government had failed to prove any criminal intent (S. M. 345-6).

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NINETEENTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant upon the ground that the renewal of defendant's passport in 1934 was in effect an application for a new passport and that upon such new application the reference to the original application for the passport was stricken out, and that on such new application there was no false statement (S. M. 346-7).

1158

TWENTIETH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the passport which the defendant is charged with having used in 1937 and 1938 was not issued to him by reason of any false statement within the interment of the statute under which defendant was indicted (S. M. 347-8).

TWENTY-FIRST.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the indictment was so vague and indefinite as to deprive defendant of the rights guaranteed him under the Fifth Amendment to the Federal Constitution (S. M. 351-2).

TWENTY-SECOND.—The Court erred in denying the motion made at the close of the entire case on behalf of de-

Assignments of Error.

1159

endant on the ground that the Court's construction of Section 2 of Title 9 of the Act of June 15, 1917 (Section 20 of Title 22 of the U. S. Code), as applied to defendant, was arbitrary and violated his constitutional rights.

TWENTY-THIRD.—The Court erred in denying the motion to dismiss the indictment at the close of the entire case on behalf of the defendant on the ground that since the statement made on the passport application beginning "My last passport was obtained from" and ending "for cancellation" was susceptible of the meaning that defendant had no passport for cancellation at the time of his application in 1934, the Government's failure to establish that defendant had such a passport at that time required the dismissal of the indictment (S. M. 352-3).

1160

TWENTY-FOURTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the Government had failed to establish that it was induced to issue the passport to the defendant by reason of the alleged false word "None" (S. M. 353).

TWENTY-FIFTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that there was no proof that defendant was in possession of a passport when he made his application for passport on August 31, 1934, and at the time of the renewal, February 2, 1937, and that there was and is nothing in the statute, or rules coming within the intentment of the statute under which defendant is indicted, which proscribes the simultaneous existence of two passports, and that from the evidence it appears that when defendant is alleged to have used his passport in 1937 and 1938 that was the only passport outstanding in his name or possession, so that the Court was required to

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1162

Assignments of Error.

find as a matter of law that defendant did not make use of any false passport wilfully or knowingly (S. M., 353-4).

TWENTY-SIXTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the offense was barred by the Statute of Limitations because in this case the making of the allegedly false statement and the securing of the passport occurred beyond the period of limitation (S. M. 354).

1163

TWENTY-SEVENTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the offense was barred by the Statute of Limitations (S. M. 354).

TWENTY-EIGHTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that Section 2 of Title 9 of the Act of June 15, 1917 (Section 220 of Title 22 of the U. S. Code) applies only to aliens or persons not owing allegiance to the United States, whereas the defendant was and is a citizen (S. M. 354-6).

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TWENTY-NINTH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that there is no law or rule authorized by law requiring defendant to state whether or not a previous passport had ever been issued to him, nor which required defendant to submit his passport for cancellation (S. M. 356).

THIRTIETH.—The Court erred in denying the motion to dismiss made at the close of the entire case on behalf of defendant on the ground that the evidence was insufficient for submission to the jury (S. M. 356).

Assignments of Error.

1165

THIRTY-FIRST.—The Court erred in refusing to charge defendant's requests to charge numbered 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 35, 36, 39, 40, 47, 48, 49, 50, 51, 53, 55, as follows:

"22. Under the first count of the indictment, the defendant is charged with the use and attempt to use a passport, on the 30th day of April, 1937, for the purpose of gaining entry and admission into the United States at the Port of New York. Under the second count of the indictment, the defendant is charged with the use and attempt to use a passport, on the 15th day of February 1938, for the purpose of gaining entry and admission into the United States at the Port of New York. Each count charges a distinct crime. If the jury find that the use described herein is not such as was contemplated by the statute, then they must acquit" (S. M. 417).

1166

"23. In this connection the jury must take into consideration that a passport is a document which, from its nature and object, is addressed to foreign powers, purporting only to be a request that the bearer of it may pass safely and freely, and is to be considered rather in the character of a political document, by which the bearer is recognized, in foreign countries, as an American citizen, and which, by usage and law of nations, is received as evidence of the fact. It is a document issued by the Secretary of State, or under his authority, by a diplomatic or consular officer of the United States, stating his citizenship and requests for him free passage and all lawful aid and protection during his travels or sojourns in foreign lands" (S. M. 417-8).

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"24. It was not the intention of Congress, in enacting Section 220 of Title 22, United States Code, to

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Assignments of Error.

punish a person who uses a passport in the manner charged in this indictment" (S. M. 418).

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"25. I charge you as a matter of law that the defendant had the absolute right to enter into the United States even though he did not have a passport, provided, however, he could, by means of any satisfactory proof, establish that he is a native-born American citizen, that is, by documents such as a birth certificate, baptismal certificate, or other proof that he was born in the United States. The fact that he may have used a passport for this purpose is not a 'use' as contemplated by Congress in defining the crime" (S. M. 418).

"26. If you should find that the sentence in the application for a passport, executed by the defendant on or about August 31, 1934, which reads as follows:

'My last passport was obtained from

(Insert Washington or location of office abroad)

1170

on _____ and is submitted herewith

(Date)

for cancellation. _____

(Give disposition of

passport if it cannot be located.)'

was interpreted by the defendant to mean that he did not have any passport in his possession to be submitted for cancellation, and that it was not his intention to conceal from the Government the fact that he previously had obtained another passport, then it is your duty to find the defendant not guilty" (S. M. 419).

Assignments of Error.

1171

"27. If the statement in the application for the passport, dated August 31, 1934: 'My last passport was obtained

from _____

(Insert Washington, or location of office abroad)

on _____ and is submitted here-

(Date)

with for cancellation,' could be reasonably interpreted as meaning, 'If you have your last passport, obtained from Washington, or abroad, submit it for cancellation', and the defendant honestly and with good cause, so interpreted the said statement, then the word 'None' was not a false statement, and the defendant cannot be held to have made a false statement" (S. M. 419-20).

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"28. The application for the passport was drawn by a Department of the Government and if the statement in the application herein involved is ambiguous, it should be construed strictly in favor of the defendant" (S. M. 420).

"29. Falsity consists in knowingly affirming a condition without probable cause and probable cause must be estimated not from the jury's standpoint but from the defendant's" (S. M. 420).

1173

"30. Although the Government in its indictment charges by quotation from this sentence, 'My last passport was obtained from', and does not complete the sentence as contained in the application blank, which was introduced into evidence by the Government, it is your duty in arriving at a determination of the interpretation of this sentence to read it in its entirety with a view to determining its entire context, and not merely that portion of the sentence which has been quoted in the indictment" (S. M. 420).

1174

Assignments of Error.

"33. If you find that the presentation of the passport on those two occasions was only for the purpose of identifying himself as a citizen of the United States, and not for the purpose of gaining a privilege as is intended by the inherent nature of a passport when used in foreign countries, then you must acquit the defendant. In determining the inherent nature of a passport, you must bear in mind that a passport has no sanctioned use, in law or custom, insofar as an American citizen is concerned, within the Port of New York" (S. M. 421).

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"35. A Government immigration inspector has only such authority as is conferred upon him by law. His authority therefore, is limited solely to the exclusion of such aliens who, by law, are not entitled to enter this country. He has no power to exclude an American citizen for any reason whatsoever" (S. M. 421-2).

1176

"36. An American citizen may be guilty of crime, or he may be diseased, or he may be otherwise undesirable, but nevertheless, a Government immigration inspector has no jurisdiction whatsoever to pass upon his right to enter this country. He must, as a matter of law, permit him to enter the country, when satisfied that he is an American citizen" (S. M. 422).

"39. The presentation of a passport to an immigration inspector employed by the United States Government for the purpose of identifying the defendant as an American citizen, is not such a utilization of a passport as is inherent in its nature, and is therefore not a 'use' of such passport within the contemplation of Title 22, Section 220 of the United States Code, as charged in the indictment" (S. M. 422).

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"40. Although there has been some testimony introduced by the Government to the effect that the defendant at various times was identified and seen in Moscow, such fact nevertheless must not be considered by you in determining the significance of the use to which this passport has been put. The issue before you is the one that is raised in the indictment. You cannot go outside of the indictment in considering whether the passport was used abroad. You must, therefore, completely disregard the testimony of the witnesses who testified that they saw the defendant in Moscow" (S. M. 423).

1178

"47. If you find that the United States Government, through its agents, had knowledge in 1929 of the fact that defendant had obtained a passport in 1927 under the name of Morris, then you may consider that fact as continuing to exist in the knowledge of the United States Government up until the time that he applied for a passport under the name of Earl Russell Browder. And in that connection, you may consider the testimony of the Government witness, Bell, who testified that there appeared a notation on the Morris application, made in 1929 by a Government employee by the name of Miss Wright, as follows: 'Recorded in Fraud File as suspect, 12/2/29, Wright'. In this connection you may further consider the testimony of the witness, Powers, a Government witness, who testified in answer to the prosecutor's inquiry that he had been visited in 1929 by a Government agent and questioned concerning the Morris application, which the said agent exhibited to him, and questioned further whether Browder could have been Morris; and in spite of this knowledge the Government issued a passport to the defendant in 1934. You are therefore to consider the foregoing in determining whether the

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Assignments of Error.

Government was or was not misled by the word 'None' " (S. M. 425).

"48. The alleged false word 'None' in the application for the passport, dated August 31, 1934, must have been the effective cause of inducing or securing the issuance of the passport which was used on April 30, 1937 and February 15, 1938; and if you are not convinced of that beyond a reasonable doubt, then you must acquit" (S. M. 426).

1181

"49. If you find that the word 'None' is no answer to the question 'My last passport was obtained from whom?' then such statement contained in the word 'None' cannot be the basis for the charges in the indictment that the defendant made a false statement in order to obtain the issuance of the passport issued on September 1, 1934; and if you so find, you shall acquit the defendant" (S. M. 426).

1182

"50. If the jury should find that at the time of the issuance of the Earl Russell Browder passport September 1, 1934, the Government had knowledge or reason to believe that accused had prior thereto received a passport, then the jury should find that the Earl Russell Browder passport was not secured by reason of the allegedly false statement 'None' made in the passport application" (S. M. 426).

"51. If the jury should find that at the time of the renewal on February 2, 1937, of the Earl Russell Browder passport issued September 1, 1934, the Government had knowledge or reason to believe that accused had prior thereto received a passport, then the jury should find that the Earl Russell Browder passport was not secured by reason of the allegedly false word 'None'.

Assignments of Error.

1183

made in the passport application; and that in any event whatever impropriety existed in securing the issuance of said passport was rendered harmless and immaterial by such knowledge or notice existing at the time of said renewal" (S. M. 426-7).

"53. If you find that the renewal application, which has been offered by the Government in evidence, executed in 1937, is a separate and distinct application for a passport, even though the physical document brought into being was identical to the original document which he had obtained on the application made in 1934, and if you find that there were no false statements of a material nature contained in such renewal application, then it is your duty to acquit this defendant" (S. M. 427-8).

1184

"55. Although the same section makes it a crime to make a false statement of a willful and material nature in an application for a passport, this is not the part of the section for which the defendant here is on trial. If this is all that the Government proves, you must acquit the defendant" (S. M. 428).

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THIRTY-SECOND.—The Court erred in denying the request made on behalf of defendant to submit to the jury as a question of fact (if the Court did not rule as matter of law) that the "use" made by the defendant of his passport did not come within the meaning of Section 2 of Title 9 of the Act of June 15, 1917. Section 220 of Title 22 of the U. S. Code (S. M. 428).

THIRTY-THIRD.—The Court erred in refusing to charge the second sentence of defendant's request to charge numbered 45 as follows:

1186

Assignments of Error.

"Even if you find that the Dozenberg, Morris and Richards passports were illegally obtained and used but on the other hand find that the Earl Russell Browder passport of 1934 was properly obtained and used, then it is your duty to acquit this defendant (S. M. 424, 439).

THIRTY-FOURTH.—The Court erred in charging the jury as follows:

1187

"I do not, however, mean by this statement that you should not consider the testimony with respect to the Dozenberg, Morris and Richards passports insofar as it relates to the issues under the two counts in the indictment which I have already explained to you" (S. M. 440).

THIRTY-FIFTH.—The Court erred in imposing a sentence so severe as two years and One Thousand (\$1,000.00) Dollars on each of the two counts of the indictment to run consecutively.

1188

And by reason of said errors and other manifest errors appearing in the record herein, the defendant prays that the judgment of conviction be set aside and that he be discharged from custody.

Dated, New York, February 7, 1940.

EDWARD KUNTZ,
Attorney for Defendant,
Office & P. O. Address,
100 Fifth Avenue,
Borough of Manhattan,
City of New York

Stipulation as to Record.

1189

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

EARL RUSSELL BROWDER,

Defendant. 1190

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a correct transcript of the record in the said District Court in the above-entitled matter, as agreed on by the parties.

Dated, New York, February 29, 1940.

JOHN T. CAHILL,
United States Attorney. 1191

EDWARD KUNTZ,
Attorney for Defendant-Appellant.

1192

Clerk's Certificate.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

EARL RUSSELL BROWDER,

Defendant.

1193

I, George J. H. Follmer, Clerk of the United States District Court, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court, in the above-entitled matter, as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the City of New York, in the Southern District of New York, this 29th day of February, 1940.

1194

(Seal)

GEORGE J. H. FOLLMER,
Clerk.

[fol. 399] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER TERM, 1939

No. 305

(Argued April 15, 1940. Decided June 24, 1940)

UNITED STATES OF AMERICA, Appellee,
against

EARL RUSSELL BROWDER, Defendant-Appellant

Appeal from the District Court of the United States for the
Southern District of New York

Earl Russell Browder was convicted of willfully and
knowingly using a passport secured by false statement.
Affirmed.

Before Swan, Chase and Patterson, Circuit Judges

Walter H. Pollak, Carol King, Benjamin Goldring and
Edward Kuntz, for appellant.

John T. Cahill, Lester C. Dunigan, Frank H. Gordon and
Robert L. Werner, for United States.

[fol. 400] PATTERSON, Circuit Judge:

This appeal raises a point of law, whether the exhibition
of a passport to a United States immigrant inspector as
proof of the appellant's citizenship on his entry into this
country from a trip abroad is a "use" of such passport
within the meaning of 22 U. S. Code, section 220. Section
220, originally section 2 of title IX of the Act of June 15,
1917, reads:

"Whoever shall willfully and knowingly make any false
statement in an application for passport with intent to in-
duce or secure the issuance of a passport under the author-
ity of the United States, either for his own use or the use of
another, contrary to the laws regulating the issuance of
passports or the rules prescribed pursuant to such laws, or
whoever shall willfully and knowingly use or attempt to use
or furnish to another for use, any passport the issue of
which was secured in any way by reason of any false state-

ment, shall be fined not more than \$2,000 or imprisoned not more than five years or both."

The indictment was in two counts. The first charged that the appellant, having obtained a passport by false statement to the effect that he had had no previous passport, used the passport on April 30, 1937 by presenting it to an immigrant inspector to secure entry into the United States. The second count charged the appellant with a similar use of the same passport on February 15, 1938.

At the trial the evidence in behalf of the United States showed that the appellant in August 1934 made written application for a United States passport. The printed form of application contained the clause, "My last passport was obtained from — and is submitted herewith for cancella- [fol. 401] tion." The appellant wrote the word "none" in the blank space and signed the application. There was evidence that actually the appellant had previously applied for and obtained three passports under names other than his own, first in 1921, again in 1927, and again in 1931. On the 1934 application a passport was issued by the Department of State on September 1, 1934. The period of validity, two years, was later extended for an additional two years at the appellant's request. On April 30, 1937 the appellant, returning to this country from a trip abroad, exhibited the passport to one Larsen, an immigrant inspector who boarded the vessel at the port of New York, as proof of his citizenship and right to enter the United States. On February 15, 1938, returning from another trip abroad, he exhibited the passport to another immigrant inspector at the port of New York. The appellant put in no evidence. The case went to the jury, and a verdict of guilty on both counts was returned.

The appellant urges that the exhibition of the passport to an immigrant inspector at the port of New York, while a use of the passport, was not the kind of use prohibited by the statute. The meaning to be attached to the word "use", the argument runs, should be restricted to use abroad, in view of the purpose for which passports are issued and in view of the evil which the statute was designed to eradicate. It is pointed out that production of a passport is not required of a citizen of the United States to reenter the country; other evidence of citizenship will suffice. The argument is not without force. It is quite true that a passport is

primarily for use in travel abroad. A passport "certifies that the person therein described is a citizen of the United States and requests for him while abroad permission to come and go as well as lawful aid and protection." Borchard, *Diplomatic Protection of Citizens Abroad*, p. 493. It has been described as "a document which, from its nature and object, is addressed to foreign powers". *Urtetiqui v. [fol. 402] D'Arcy*, 9 Pet. 692, 699. Similar definitions are given in Moore, *International Law Digest* (1906), p. 856; Hyde, *International Law Chiefly As Interpreted And Applied By The United States* (1922), p. 692; 17 *Opinions Attorney General*, 674. But the sweeping statement that the American passport "has no sanctioned uses, customary or statutory, within the United States", taken from Hunt, *The American Passport* (1898), p. 4, is certainly subject to qualification. A use that is long established and takes place commonly within the United States is the presentation of a passport to foreign consulates here for procurement of visa, in anticipation of travel abroad. See Hunt, p. 5; Hyde, pp. 698-699; Borchard, pp. 504-506; Circular of Department of State, February 8, 1915.

The appellant also refers to regulations of the Department of State in force from 1911 to 1920, to the effect that passports "are intended for identification and protection in foreign countries, and not to facilitate entry into the United States." However it may have been prior to 1920, the Department of State in official publications, "Notice to Bearers of Passports", published at frequent intervals from 1930 to the present time, has recommended the use of passports to facilitate entry into the United States. In these publications the Department of State says: "An American citizen leaving the United States for a country where passports are not required is nevertheless advised to carry a passport, except in travel to Canada and Mexico. The passport may later save the time and inconvenience of applying for one abroad should the holder desire to travel in countries where passports are required. It will also enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry." And there is testimony in the case that production of passport is one of the methods used to convince immigrant inspectors of a passenger's American citizenship and consequent right to enter the United States. It cannot be

[fol. 403] doubted, therefore, that in 1937 and 1938 the exhibition of a passport to an immigrant inspector as proof of the bearer's citizenship and right to enter the country from a vessel arriving at New York was a sanctioned and recognized use of a passport.

The words of the 1917 statute are broad,—“whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement”. Literally, the words cover any and all uses to which a passport might be put. We assume, however, that the statute goes no further than to forbid the use of a passport obtained by false statement as a credential of citizenship in the ways to which regular passports are commonly put. We also assume that in 1917 the use of a passport to prove citizenship on entry into this country had not become customary. The fact that is decisive of the point of law raised by the appellant is that such a use was a sanctioned and recognized use in 1937 and in 1938, when the acts charged in the indictment occurred. The meaning of a statute does not change save as it may be amended; but a statute is prospective and its application to a given state of facts may change as new things or new uses of old things come into existence. See *De Lima v. Bidwell*, 182 U. S. 1; *Puerto Rico v. Shell Co.*, 302 U. S. 253; *Maxwell on Interpretation of Statutes* (6th Ed.), pp. 144-145. As we read the statute, it forbids putting passports obtained by false statement to any of the uses to which passports regularly issued may be customarily put. The production of a passport to an immigrant inspector as proof of the bearer's citizenship and right to enter the country having become a sanctioned and recognized use of a passport prior to the times charged in the indictment, we are of opinion that such a use of a passport obtained by false statement constitutes a violation of the act, provided the use in a particular case was a wilful and knowing one.

The appellant's argument as to the evil which the act [fol. 404] was designed to overcome, the fraudulent use of passports in 1914-1917, does not persuade us that the act was intended to apply solely to the misuse of American passports in foreign lands. Another argument is that use of an expired passport, in effect forbidden under section 4 of the same title, would not include use of an expired passport to identify an American citizen reentering this

country, and in this connection it is claimed that use of expired passports by citizens returning from Canada and Bermuda is countenanced by immigrant inspectors. We have no way of knowing whether that use of expired passports is prevalent, and we see no need of passing on the legality of such a practice.

The contention is also made that the trial judge erred in denying a motion to dismiss at the close of the case on the ground that as matter of law there was no willful and knowing use of the passport. On the evidence it was for the jury to say whether the appellant's use of the passport was a willful and knowing use, and denial of the motion to take that issue from the jury was not erroneous. The trial judge explained the meaning of the words in his charge, and the appellant took no exception to the definition and did not ask that a more particular exposition be given. We cannot condemn the charge for not being more specific when no exceptions raising the point were taken. *Greater New York Live Poultry Chamber of Commerce v. United States*, 47 F. (2d) 156 (C. C. A. 2). Complaint is also made of refusal of requests to charge. Whatever was essential in the requests was adequately covered in the charge as given.

Affirmed.

[fol. 405] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of June, one thousand nine hundred and forty.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase,
Hon. Robert P. Patterson, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

EARL RUSSELL BROWDER, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 406] [Endorsed:] United States Circuit Court of Appeals, Second Circuit, United States of America v. Earl Russell Browder, Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed June 28, 1940. D. E. Roberts, Clerk.

[fol. 407] UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 406, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States of America, Plaintiff-Appellee, against Earl Russell Browder, Defendant-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 1st day of July, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fourth.

D. E. Roberts, Clerk: (Seal.)

[fol. 408] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy took no part in the consideration and decision of this application.

(1700)